

**ENGINEERING, PROCUREMENT AND CONSTRUCTION
CONTRACT FOR DRY SORBENT INJECTION SYSTEM**

**DESERT VIEW POWER LLC
MECCA, CALIFORNIA**

July 30, 2015

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ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT

This ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT (this “Agreement”) is made effective as of July 30, 2015 (the “Effective Date”), between Nol-Tec Systems, Inc. (“Contractor”), a corporation organized under the laws of Minnesota, and Desert View Power LLC (“Owner”), a limited liability company organized and registered under the laws of the State of Delaware. Contractor and Owner are sometimes herein referred to as the “Parties”, and individually as a “Party.”

RECITALS

WHEREAS, Owner desires to construct, install, own and operate the Project (as defined herein);

WHEREAS, Contractor represents to Owner that Contractor has the expertise and experience to design, engineer, procure, install, construct, test, assist in the commissioning and start up the Project and to train the persons who will operate and maintain the Project pursuant to the requirements set forth in the Scope of Work Documents (defined herein below), such services to be provided for the Contract Price (defined herein below); and

WHEREAS, Owner desires to engage the services of Contractor to design, engineer, procure, install, construct, commission and start up the Project, and to train the persons who will operate and maintain the Project, all on a “turn-key,” fixed price, and date certain to complete basis, and Contractor desires to provide such services for the Project, all under the terms and conditions of this Agreement.

STATEMENT OF AGREEMENT

NOW, THEREFORE, in consideration of the promises and the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Contractor hereby agree as follows:

ARTICLE 1 - GENERAL PROVISIONS

1.1 Conflicting Provisions

1.1.1 If there is any conflict or inconsistency between any of the documents forming this Agreement, including the terms and conditions hereof and the Appendices hereto, their order of precedence shall be as follows; provided, however, that with respect to requirements of a technical nature describing the details of the performance of the Project, the Materials and Equipment or the Work, the more stringent requirement shall take precedence:

- (a) This Agreement;
- (b) Appendix A; and
- (c) All other Appendices of this Agreement (which shall be of equal priority).

- 1.1.2 Whenever possible, provisions shall be construed as complementary rather than conflicting. If Contractor or the Owner becomes aware of any conflict or inconsistency between any of the documents forming this Agreement, the Party discovering the conflict or inconsistency shall notify the other Party of such conflict or inconsistency in writing.

1.2 Certain Definitions

The terms set forth below (and variations thereof) when used in this Agreement have the meanings specified or referred to below:

“Affiliate” in respect of any Person, means any other Person (including any officer, director, shareholder, member, partner, employee, agent or representative of such Person) that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such first Person. For purposes of this definition, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, partnership or other ownership interests, by contract, by law or otherwise.

“Agreement” means this Agreement and all schedules, exhibits, appendices or attachments hereto, as any of the same may be amended or supplemented from time to time in accordance with the terms hereof.

“Applicable Law” means all applicable provisions of any constitution, statute, law, ordinance, code, rule, regulation, decision, order, decree, judgment, release, license, permit, stipulation or other official pronouncement enacted or issued by any Governmental Authority or arbitrator or arbitration panel and as amended, to the extent applicable to the performance of the Work, any portion of the Project, either Party or any Subcontractor, or this Agreement.

“Applicable Permit” means any Permit that is required by Applicable Law to perform any portion of the Work or to operate the Project.

“Business Day” means any day other than a Saturday, Sunday or a day on which banks are required or authorized to be closed in the State of California or New York.

“Construction Aids” means all items that are owned or leased by Contractor or its Subcontractor and required for the construction of the Project, but which are not intended to become a permanent part of the Project, including all materials, supplies, construction equipment, construction tools, construction support services, field office equipment, field office supplies, scaffolding and form lumber, temporary buildings and facilities, man-lifts, fork-lifts and the like.

“Construction Documents” means all documents listed in Appendix A and all other drawings, operation and maintenance manuals, and other documents required by this Agreement to be submitted by Contractor to Owner in connection with the design, construction and operation of the Project.

“Consumption Guarantee” shall have the meaning ascribed to it in Appendix C.

“Consumption Rate” shall have the meaning ascribed to it in Appendix C.

“Contractor Documents” means this Agreement, the Performance Guarantees, and the Final Release and Waiver attached hereto as Appendix G.

“Contractor Hazardous Material” means any Hazardous Material brought onto, generated on or at the Site, or under the control at the Site by Contractor, any Subcontractor, or any of their respective representatives, agents or invitees, but excludes all Owner Hazardous Material.

“Contract Schedule” means the construction milestone schedule described in Section 11.1

“Contractor Taxes” means all Taxes and duties in respect of (i) Contractor, any Subcontractor, any of their respective vendors, or any of their respective businesses or assets, (ii) Contractor’s and/or Subcontractors’ acquisition of or payment for any Material and Equipment or Services provided in connection with the Work, and (iii) the income, receipts, capital or net worth of Contractor and/or Subcontractor, including from Contractor’s receipt of the Contract Price, but excluding all Taxes for which Owner is expressly obligated to pay herein.

“Dollars” means U.S. Dollars.

“Event of Default” means the occurrence of any of the following events:

- (i) Contractor defaults in the payment of any sum payable to Owner under any Contractor Agreement and such default shall continue for five (5) Business Days after Contractor’s receipt of written notice from Owner that such payment is past due;
- (ii) Contractor, except as otherwise agreed to in writing by the Parties, or as is otherwise expressly allowed under this Agreement:
 - (a) fails to complete the Work and achieve Substantial Completion on or prior to the Scheduled Substantial Completion Date, or
 - (b) fails to complete the Work and achieve Final Completion on or prior to the Scheduled Final Completion Date, unless changed by written agreement or as otherwise allowed under this Agreement.
- (iii) Contractor defaults in any material respect in carrying and maintaining any insurance required to be maintained by Contractor hereunder through the Final Completion Date, until three (3) years after the Final Completion Date in the case of general liability insurance and until four (4) years beyond the Final Completion Date with respect to the products and completed operations insurance required under this Agreement;

(iv) Contractor defaults in any respect in the observance or performance of any other covenant, condition or agreement of Contractor contained in any Contractor Agreement and such default shall continue for thirty (30) days after written notice to Contractor specifying the default and demanding that the same be remedied; provided, however, that such 30-day period shall not apply and the Event of Default shall be immediate with respect to a breach of Article 8 or Section 14.4.2 of this Agreement;

(v) any representation made by Contractor in any Contractor Agreement or in any certificate, statement, document or instrument given pursuant to the terms hereof or thereof that is false or materially misleading in any respect as of the date on which it was made;

(vi) (A) Contractor or any Subcontractor performing a substantial portion of the Work shall file a petition commencing a voluntary case under, or for liquidation, reorganization or an arrangement pursuant to, any federal or state bankruptcy law, (B) Contractor or any Subcontractor performing a substantial portion of the Work shall be adjudicated a debtor or be declared bankrupt or insolvent under any federal or state law relating to bankruptcy, insolvency, winding up, or adjustment of debts, (C) Contractor or any Subcontractor performing a substantial portion of the Work shall make a general assignment for the benefit of creditors, (D) Contractor or any Subcontractor performing a substantial portion of the Work shall admit in writing its inability to pay its debts generally as they become due, or (E) if a petition commencing an involuntary case or an answer proposing the adjudication of Contractor or any Subcontractor performing a substantial portion of the Work as a debtor or a bankrupt or proposing its liquidation or reorganization pursuant to any federal or state bankruptcy law shall be filed in any court;

(vii) a custodian, receiver, trustee or liquidator of Contractor or any Subcontractor performing a substantial portion of the Work, all or substantially all of the assets of Contractor or any Subcontractor performing a substantial portion of the Work, or Contractor's interest in the Project is appointed in any proceeding brought against Contractor; or

(viii) Notwithstanding clause (i) above, Contractor fails to pay any amount when due as required by Article 13.

"Final Completion" shall have the meaning set forth in Section 11.5.

"Final Completion Date" means the date on which the Owner has given written confirmation that Final Completion has occurred pursuant to Section 11.5.

"Geotechnical Report" means that certain draft report prepared by Kleinfelder West, Inc., dated January 18, 2008, a copy of which Contractor has received and examined prior to the execution of this Agreement.

"Good Engineering Practice" means those practices, methods and acts as they relate to the Work that are in accordance with standards that are commonly used under similar

circumstances by the power industry in the United States of America to prudently engineer, design, construct, equip and initiate operation of projects similar to the Project at electric power generation biomass facilities in a manner consistent with reliability, dependability, efficiency, safety, Applicable Law, standards, equipment manufacturers' recommendations, environmental protection and expedition.

"Governmental Authority" means any federal, state, local or foreign legislative, executive, judicial, quasi-judicial or other public authority, agency, department, bureau, division, unit, court or other public body, Person or entity.

"Hazardous Materials" means any hazardous or toxic substances, materials and wastes which are regulated or are classified as hazardous or toxic by any Governmental Authority having jurisdiction over the Site, including without limitation substances defined as "hazardous substances" pursuant to Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Sections 9601 et. seq.); those substances defined as "hazardous waste" pursuant to Section 1004(5) of the Resource, Conservation and Recovery Act (42 U.S.C. Sections 6901 et. seq.); those substances designated as a "hazardous substance" pursuant to Section 311(b)(2)(A) or as a "toxic pollutant" pursuant to Section 307(a)(1) of the Clean Water Act (33 U.S.C. Sections 1251 et. seq.) those substances defined as "hazardous materials" pursuant to Section 103 of the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801 et. seq.; those substances regulated as a "chemical substance or mixture" or as an "imminently hazardous chemical substance or mixture" pursuant to Section 6 or 7 of the Toxic Substances Control Act (15 U.S.C. Sections 2601 et. seq.); those substances defined as "contaminants" pursuant to Section 1401 of the Safe Drinking Water Act (42 U.S.C. Sections 300f et. seq.), if present in excess of permissible levels; those substances regulated pursuant to the Oil Pollution Act of 1990 (33 U.S.C. Sections 2701 et. seq.); those substances defined as a "pesticide" pursuant to Section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 and by the Federal Pesticide Act of 1978 (7 U.S.C. Sections 136 et. seq.); those substances defined as a "source", "special nuclear" or "by product" material pursuant to Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. Sections 2014 et. seq.); those substances defined as "residual radioactive material" in Section 101 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7901 et. seq.); those substances defined as "toxic materials" or "harmful physical agents" pursuant to Section 6 of the Occupational Safety and Health Act (29 U.S.C. Sections 651 et. seq.); those substances defined as "hazardous air pollutants" pursuant to Section 112(a)(6), or "regulated substance" pursuant to Section 112(r)(2)(B) of the Clean Air Act (42 U.S.C. Sections 7401 et. seq.); those substances defined as "extremely hazardous substances" pursuant to Section 302(a)(2) of the Emergency Planning & Community Right to Know Act of 1986 (42 U.S.C. Sections 11001 et. seq.); and those other hazardous substances, hazardous wastes, toxic pollutants, hazardous materials, chemical substances or mixtures, imminently hazardous chemical substances or mixtures, contaminants, pesticides, source materials, special nuclear materials, by-product materials, residual radioactive materials, toxic materials, harmful physical agents, air pollutants, regulated substances or extremely hazardous substances defined in any regulations promulgated pursuant to any of the above referenced

environmental laws; and any and all other contaminants, toxins, pollutants, hazardous substances, and contaminated, polluted, toxic and/or hazardous materials the use, disposition, possession or control of which is regulated by any one or more of the Applicable Laws.

“Indemnified Party” means an Owner Indemnified Party or Contractor Indemnified Party.

“Indemnitor” means the Party required to indemnify an Indemnified Party pursuant to Article 6.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), and (b) the maximum rate permitted by Applicable Law.

“Lien” means any lien mortgage, encumbrance, pledge, charge, lease, easement, servitude, adverse claim, right of others or security interest of any kind.

“Liquidated Damages” has the meaning set forth in Section 13.1

“Loss” means any claim, cause of action, demand, suit, proceeding, fine, penalty, liability, judgment, award, loss, damage, interest, cost or expense (including reasonable attorneys’ fee and expenses and court cost).

“Materials and Equipment” shall include all materials, supplies, apparatus, equipment and machinery required for the Project.

“Mechanical Completion” shall have the meaning ascribed to it in Section 11.2

“Notice to Proceed” or “NTP” means a written notice delivered by Owner to Contractor notifying Contractor that Contractor is to proceed with all obligations under the Agreement.

“Operator” means Desert View Power LLC.

“Owner’s Engineer” means the Person so designated from time to time by Owner to Contractor.

“Owner’s Representative” means the Person so designated from time to time by Owner to Contractor. Owner’s Representative and Owner’s Engineer may be the same person from time to time.

“Performance Guarantees” means the Schedule Guarantee and the Consumption Guarantee.

“Performance Tests” means the performance tests set forth in Appendix C.

“Permit” means any waiver, franchise, exemption, variance, permit, clearance, registration, authorization, consent, decree, approval, license, filing, waiver, privilege, exemption, ruling, certification or order from or required to be obtained or maintained by any Governmental

Authority in connection with the design, engineering, procurement, permitting, fabrication, construction, installation, commissioning, start-up, testing, ownership or operation of the Project or any of its components, the Work, the Site, Contractor, any Subcontractor, Owner or any other Person involved with the performance of the Work or operation of the Project.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, cooperative, joint stock company, trust, non-incorporated organization or Governmental Authority.

“Pre-Existing Hazardous Material” means Hazardous Material that existed on, at or under the Site prior to Contractor’s access to the Site pursuant to the Notice to Proceed.

“Prudent Industry Practices” means the practices, methods, and equipment, as the same may change from time to time, that are commonly used in prudent engineering and operations to design and operate the associated equipment lawfully and with safety, dependability, efficiency and economy.

“Punch List” means a list of the outstanding items within the Scope of Work that are not satisfactorily (in the reasonable discretion of Owner) completed on the Substantial Completion Date and that Owner has agreed in its discretion do not affect the safe, reliable commercial operation of the Project; provided, however, that Contractor is not excused from completing such items pursuant to the terms of this Agreement.

“Schedule Guarantee” means the Schedule Guarantee set forth in Appendix C.

“Scheduled Final Completion Date” means the date specified for Final Completion on Appendix C, unless changed by written agreement signed by Owner or as allowed under this Agreement.

“Scheduled Substantial Completion Date” means the date specified for Substantial Completion on Appendix C, unless changed by written agreement signed by Owner or as allowed under this Agreement.

“Services” means all the planning, including architectural, design, engineering, procurement, construction, cleanup, construction supervision, personnel training, testing, startup and related services that are required of Contractor hereunder.

“Site” means the biomass facility operated by Owner at 62-300 Gene Welmas Drive, Mecca, California, 92254.

“Startup and Testing” means the execution of all activities required in the start-up, testing and placement of the Project into service.

“Subcontractor” means any vendor, supplier, consultant and subcontractor of any tier, in each case who has a direct contract with Contractor or with any of Contractor’s other vendors, suppliers, consultants or subcontractors (in each case of any tier) for the performance of any part of the Work or Services.

“Substantial Completion” shall have the meaning ascribed to it in Section 11.4.

“Tax” or “Taxes” means all fees, taxes (including payroll taxes, unemployment taxes, employee related taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and, levies, assessments, withholdings and other charges and impositions of any nature, plus all related interest, penalties, fines and additions to tax, now or hereafter imposed by any Governmental Authority.

“Technical Specifications” means the Technical Specifications attached hereto as Appendix A.

“Uncontrollable Circumstance” means an event, condition or circumstance beyond the reasonable control of the Party claiming an Uncontrollable Circumstance, including acts of God, flood, earthquake, riot or civil insurrection, war, sabotage, and nuclear accident, in each case to the extent that the Uncontrollable Circumstance (i) is the primary cause that prevents, in whole or in part, the performance of the Party claiming the event, (ii) is not the fault of such Party or its subcontractors, and (iii) could not have been prevented by such Party’s exercise of reasonable diligence. Without limitation, the term “Uncontrollable Circumstance” does not include weather conditions reasonably foreseeable in the geographic area in which the Site is located, labor shortages, or equipment shortages, strikes or other labor disturbances of a Party, and with respect to Contractor, any Subcontractor or vendor thereof (unless such strike or labor disturbance is a national or industry wide strike or disturbance), or the economic hardship of a Party.

“Warranty Period” means a period of eighteen (18) months beginning on the Final Completion Date.

“Work” shall have the meaning ascribed to it as set forth Section 2.1 of this Agreement.

1.3 Interpretation

- 1.3.1 This Agreement and all documentation to be supplied hereunder shall be in the English language. All dimensions shall be specified in the English system.
- 1.3.2 Unless the context requires otherwise, words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other.
- 1.3.3 Unless the context requires otherwise, with regard to general oversight of the Scope of the Work, review of the drawings and specifications and other documents, access to the Site and the Work and other similar rights of Owner or any Lender, the term Owner shall be deemed also to include Owner’s Representative, and the term Lender shall be deemed also to include Lender’s Engineer.
- 1.3.4 Unless the context requires otherwise, any reference in this Agreement to any Article, Section or Appendix means and refers to the Article or Section contained in the Agreement or the Appendix attached to this Agreement. The words “include” and “including” means to include, without limitation.

ARTICLE 2 - THE WORK

2.1 Scope of Work

Contractor shall design, engineer, procure, install, construct, start-up, test and provide personnel training for the operation and maintenance of a facility of the type meeting the requirements and specifications set forth in the Technical Specifications attached as Appendix A (collectively, the “Project”) in conformance with the terms and conditions of this Agreement, Good Engineering Practice, Prudent Industry Practices the requirements of all Applicable Laws and all permits. The Project will be built on the Site. The scope of Contractor’s responsibilities hereunder are set forth more particularly in the Appendices hereto and includes, without limitation, furnishing all Services, supervision, labor, materials, supplies, equipment and machinery, including all Materials and Equipment, required to design, engineer, procure, install, construct, complete, start up, and test, including Startup and Testing of, the Project. Such responsibilities of Contractor hereunder are sometimes called the “Work” or “Scope of Work” (such term also means that which is produced, constructed or built pursuant to this Agreement, where the context so requires). Where this Agreement describes the Work in general terms, but not in complete detail, it is understood and agreed that the Work includes any incidental work required to complete the Project. Any unique drawing or engineering necessary for the design, engineering, construction, operation or maintenance of the Project shall constitute part of the Work to be performed by Contractor. Where ever Contractor causes or permits a Subcontractor to perform any Work or other obligation of Contractor under this Agreement, Contractor shall be a primary obligor with respect to such Subcontractor’s performance or non-performance of such Work, including any negligence or misconduct on Subcontractor’s part, regardless of whether this Agreement expressly requires Contractor to cause Subcontractor to perform (or refrain from performing) such activities.

2.2 Notice to Proceed

- 2.2.1 Owner shall not have any obligation to Contractor under this Agreement until the Owner has issued a Notice to Proceed:
- 2.2.2 Contractor shall commence performance of the Work upon (and, subject to 2.2.3, only upon) receipt from Owner of (and in accordance with) the Notice to Proceed. The date Contractor is authorized to commence performance of the Work pursuant to the Notice to Proceed shall be referred to herein as the “Commencement Date”.

2.3 Certain Contractor Responsibilities

In addition to or in connection with Contractor’s satisfaction of its obligations otherwise specified in this Agreement, after delivery of the Notice to Proceed, Contractor shall proceed diligently to complete the Work and shall, in accordance with Section 2.1, complete or satisfy the following items set forth in this Section 2.3 at its sole cost and expense, except as otherwise expressly set forth herein, as part of the Work:

- 2.3.1 Furnish the services of and pay all necessary supervisors, engineers, designers, draftsmen, and other personnel necessary for the preparation of all drawings and specifications required for the Work.

- 2.3.2 Furnish the services of and pay all supervisors, foremen, project managers, skilled and unskilled labor, and all other tradesmen and personnel necessary to perform the Work. Contractor shall employ (and cause Subcontractors to employ) only persons who are licensed in accordance with all Applicable Laws, careful and appropriately qualified, skilled and experienced in their respective trades or occupations. All Subcontractors shall be reasonably acceptable to Owner and shall not be retained or replaced without the written consent of Owner, which consent shall not be unreasonably withheld, conditioned or delayed. Contractor is responsible for complying with all Applicable Laws (including without limitation, rates of pay, payment of wages, condition of employment and recordkeeping) in connection with Subcontractors and all personnel employed by Contractor and Subcontractors.
- 2.3.3 Identify each member of its and its Subcontractor's labor force performing Work on the Site in accordance with Good Engineering Practices.
- 2.3.4 Furnish and maintain at the Site such services and amenities for persons performing the Work at the Site as required by Applicable Laws and Applicable Permits and as otherwise necessary for persons to perform the Work, including (as needed) sanitation, safety, security, refuse disposal systems and other requirements in connection with such accommodations and amenities.
- 2.3.5 Not possess, consume, import, sell, distribute, give, barter or otherwise dispose of any alcoholic beverages or drugs (excluding drugs for proper medical purposes and then only in accordance with Applicable Laws) at the Site, or permit or suffer any such possession, consumption, importation, distribution, sale, gift, barter or disposal thereof by its Subcontractors, agents or labor, and shall use reasonable efforts to assure that the Site is kept free of all such substances. Contractor shall promptly identify and remove from its or its Subcontractors' employment at the Site any person (whether in the charge of Contractor or any Subcontractor) who is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such person's performance of any portion of the Work, excluding any person using a prescription drug or over-the-counter drug, in each case for proper medical purposes, or any other person who does or whose actions may create any unsafe condition or situation that may cause damage or harm to any person or property.
- 2.3.6 Except as required for Site security, not possess, distribute, give, barter or otherwise dispose of, to any person or persons, any arms or ammunition of any kind at the Site, or permit or suffer the same as aforesaid and shall at all times assure that the Site is kept free from arms and ammunition.
- 2.3.7 Be responsible for the conduct and deeds of its and its Subcontractors' labor force relating to the Work and the consequences thereof. Contractor shall take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or among such labor at the Site and for the preservation of peace, protection and safety of property in the area of the Site against the same.

- 2.3.8 Use reasonable efforts to minimize the risk of labor-related delays or disruption of the progress of the Work, including promptly taking reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labor jurisdictional disputes, including the filing of appropriate processes with any court or administrative agency having jurisdiction to settle, enjoin or award damages resulting from violations of collective bargaining agreements or labor jurisdictional disputes. Contractor shall advise Owner promptly, in writing, of any actual or threatened labor dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or any Subcontractors.
- 2.3.9 Ensure that all its personnel and personnel of any Subcontractors performing the Work at the Site have such documents (such as visas, driver's licenses and work permits) and are paid as may be required by Applicable Laws.
- 2.3.10 Procure and supply all Services and Construction Aids other than those specifically provided by the Owner. If, in the reasonable opinion of Owner, any of Contractor's equipment, supplies, tools or other Construction Aids are unsafe or inadequate, Contractor shall remove such items from the Site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, supplies, tools and other Construction Aids at all times and shall provide adequate storage for all such items.
- 2.3.11 Prepare and furnish to Owner the Contract Schedule as specified in Section 11.1, which shall be based on achieving the milestone dates. The Contract Schedule shall represent the Contractor's intended work plan and may be amended from time to time by the written agreement of Contractor and Owner to reflect actual work progress and any work plan changes.
- 2.3.12 (i) Obtain all Permits required to enable Contractor and each Subcontractor to perform the Work and provide a copy of all such Permits to Owner, including, without limitation, all Permits necessary for the ordinary conduct of its (and Subcontractors') business as a contractor as contemplated by this Agreement, including without limitation, any approvals necessary for it to do business in the State of California and any Permit for hauling material, disposal of waste (including the disposal of Hazardous Materials that Contractor or any Subcontractor is required to dispose of hereunder) and transportation of Equipment and Materials and Construction Aids to or at the Site (ii) use commercially reasonable efforts to assist Owner in obtaining any Permits required for construction and operation of the Project and not described in clause (i) hereof; and (iii) engineer, procure, and construct the Project so that it will meet all construction and operating permit requirements. Owner reserves the right to review the application of all Permits; provided, however, the exercise or non-exercise of such right shall not be considered approval. Any modification to the Owner's Title V Permit to Operate is specifically excluded from the Contractor's scope.

- 2.3.13 Conduct Startup and Testing of the Project; provide technical supervision start-up personnel, including supervision of any required Subcontractor service representatives, construction supervision and craft personnel as required for system adjustments during such Startup and Testing period of the Project; and arrange and pay for any laboratory tests or special test equipment required to accomplish such testing.
- 2.3.14 Employ a competent project manager and other key personnel who shall be in attendance at the Site during the progress of the Work. Contractor shall provide Owner an organizational chart containing the names and titles of the construction management team and shall update such chart to reflect any changes thereto. The project manager shall be Contractor's full-time, on-site representative, and shall have full authority to act for and make binding and enforceable decisions on behalf of Contractor. All communications with, given to, or received from the project manager shall be as binding as if with, given to, or received from Contractor.
- Owner shall have the right, in its reasonable discretion, to approve and require the removal of the project manager. Contractor shall employ, or obtain the services of, such competent and qualified employees and personnel as may be required to support completion of the Work. Contractor shall furnish Owner with verification of the qualifications, education and experience of its employees and personnel as requested by Owner; provided, however, that the exercise or non-exercise of such right by Owner shall not be considered approval. Owner shall have the right to require the removal of any Contractor's or Subcontractor's employees and personnel assigned to any aspect of the Work if in the reasonable judgment of Owner such removal is in Owner's best interests. Any employees or personnel of Contractor or Subcontractors judged by Owner as not reasonably satisfactory shall be promptly removed from the Site, and other employees or personnel assigned to the Work at no additional cost to Owner.
- At all times, Contractor shall, and shall cause all Subcontractors to, enforce good order among its employees and personnel and those of its Subcontractors, and shall not employ or permit any Subcontractor to employ any unfit Person or anyone not skilled in the work assigned to such Person. Contractor shall make all reasonable efforts in the employment of labor (whether directly or indirectly employed) to avoid conflict or interference with or between the various trades, or delay in the performance of Contractor's obligations.
- 2.3.15 At all times be, and require every Subcontractor to be, fully insured, qualified and capable of performing every item, aspect and phase of the Work, or, with respect to each Subcontractor, that portion of the Work assigned to such Subcontractor.
- 2.3.16 Comply, and cause each Subcontractor to comply, with all Applicable Laws and all Applicable Permits.
- 2.3.17 Provide all consumables for the Construction Aids and in sufficient quantities to meet the Contract Schedule; and dispose of chemicals, Hazardous Materials, and other

waste produced during performance of the Work, including during Startup and Testing.

- 2.3.18 Provide for Owner's timely review and approval of the Construction Documents identified in Appendix A, and such other documentation supporting the Project design, construction or operation as may be requested by Owner during the course of the Work.
- 2.3.19 Pay and satisfy the Contractor Taxes.
- 2.3.20 Provide a training program for the training of the operations and maintenance personnel. Contractor shall provide such trainers, training materials and facilities for such program as may be necessary to train such operation and maintenance personnel to be capable of independently operating and maintaining the Project.
- 2.3.21 Coordinate and properly execute, or caused to be executed, the Work. Contractor shall obtain, coordinate and submit to Owner's Representative such details (including details of Work to be carried out off the Site, but excluding financial information) from Subcontractors as are reasonably requested by Owner regarding progress of the Work. Contractor shall, and shall cause Subcontractors to, control the locations of their work or materials, in order to prevent conflicts with the work of other Subcontractors or Contractor.
- 2.3.22 Use commercially reasonable efforts to cooperate with all other contractors, Owner's employees and suppliers hired by Owner, and coordinate the efforts with Owner's representative on-Site tasks and activities to facilitate the successful completion of the Project in accordance with this Agreement.
- 2.3.23 During the execution of the Work, keep the Site free from all unnecessary obstructions, and store or dispose of any surplus Materials and Equipment. Contractor shall clear away and remove from the Site any debris, wreckage, rubbish or Construction Aids no longer required.

Upon achievement of Final Completion, clear away and remove from the Site all Construction Aids, surplus material, wreckage and rubbish, and shall dispose of all such waste materials in accordance with Applicable Laws, Applicable Permits and the requirements set forth in this Agreement. Contractor shall leave the Site and the Project in a clean and safe condition to the reasonable satisfaction of Owner.
- 2.3.24 Be responsible for identifying, storing, transporting, disposing, clean up, removal, and remediation of Contractor Hazardous Materials.
- 2.3.25 Be responsible for procurement, transport, receiving, unloading and safe keeping (to the extent in Contractor's control) of all Materials and Equipment, Construction Aids, and other things required for the completion of the Work.
- 2.3.26 Subject to Section 2.5, permit each of Owner, Owner's Representative and Owner's Engineer, upon reasonable notice to Contractor, to inspect, examine and test the

materials and workmanship, and to check the progress of manufacture, of all Materials and Equipment to be supplied under the Agreement, and to check the progress of the Work and Services, and Contractor shall cooperate with such persons in such endeavors; provided that any such inspection, examination and testing shall be conducted at Owner's cost and shall not cause any material delay, interference or cost increase in the execution of the relevant Work, except to the extent otherwise specifically provided herein. Owner may identify any non-conforming work, materials or equipment by written notice to Contractor. Any such inspection, examination or testing, or the lack thereof, shall not constitute acceptance of such materials and workmanship or in any way affect or reduce Contractor's obligations to complete the Work in accordance with the Agreement.

Contractor shall provide at least five (5) days prior notice to Owner's Representative or Owner's Engineer of the time and place when Work performed under the Agreement will be ready for inspection, examination and testing by Owner's Representative or Owner's Engineer, before packaging, covering up or putting out of view such Work. In the event Contractor fails to provide such notice and if Owner, in its reasonable discretion, determines that it is necessary to uncover Work for Owner to undertake inspection, then Contractor shall bear the expenses of such uncovering and for reassembly of such Work. If any part of the Work has been covered which Owner has not specifically requested to observe before the covering despite delivery to Owner of proper written notice of the availability of Work for inspection, Owner may request to see such Work and Contractor shall uncover such Work and the costs thereof shall be borne in accordance with the following. If Owner finds that such Work complies with the requirements of this Agreement, then Owner shall (i) pay Contractor the costs of uncovering and replacing the Work and (ii) adjust the Scheduled Substantial Completion Date, if required, to account for any delay caused by such inspection, in either case pursuant to the terms of this Agreement. If such Work is found to be non-conforming, then the cost of uncovering and replacing the Work shall be borne by Contractor.

On or before Substantial Completion of the Project, Owner shall have the right to order Contractor to correct non-conforming Work, materials or equipment related to or incorporated into the Project. If any Work is defective or non-conforming, Owner shall give Contractor written notice specifying such defect or non-conformity after Owner observes said condition and Contractor shall take prompt corrective action with respect thereto. After Substantial Completion, Owner shall have the right to order Contractor to correct non-conforming Work, materials or equipment in accordance with the warranty provisions of Article 5.

2.4 Certain Owner Responsibilities

Owner shall, subject to the terms and conditions of this Agreement, do, complete or satisfy the following items set forth in this Section 2.4:

- 2.4.1 Appoint an Owner's Representative with whom Contractor may consult at all reasonable times, and whose instructions, requests, and decisions will be binding

upon Owner as pertaining to this Agreement and the performance of the Parties' obligations hereunder.

- 2.4.2 Pay all taxes including sales and property taxes incident to Project ownership assessed against the Site and/or the Project, including all Materials and Equipment after they have become a permanent part of the Project, excluding in all cases the Contractor Taxes; and
- 2.4.3 Provide reasonable assistance to Contractor in obtaining any Permits which are required to be obtained by Contractor.
- 2.4.4 Provide plant operating personnel (to operate under the supervision of Contractor) required during Start-up and Testing and pre-commissioning.

2.5 Right to Inspect

All Work shall be subject to inspection by both the Owner and Owner's Engineer at all reasonable times and at all places. Any such inspection is for the sole benefit of Owner, as applicable, and shall not relieve Contractor of the responsibility for providing quality control measures to assure that the Work strictly complies with the requirements of this Agreement. Both the Owner and Owner's Engineer may appoint such inspectors as it deems proper to inspect the materials furnished and the Work performed for compliance with this Agreement. Contractor shall furnish all reasonable assistance required by the inspectors for the proper inspection. Owner shall make available to Contractor all reports of inspections conducted by it.

2.6 Delivery of Documents; Owner Review

- 2.6.1 Contractor shall provide Owner with copies of all specifications for all subsystems, major equipment and components, schedules, plans, drawings and other documents, including updates, contemplated by Appendix A. Each such document shall be in form and substance reasonably satisfactory to Owner. As they become available according to the Work schedule, Contractor shall provide four (4) hard copies. Electronic file format may be provided as a supplement but not as a substitute for hard copies. Without limiting the generality of the foregoing, Contractor shall provide copies of the following documents by the following dates:
 - (a) a draft copy of the Project manual, including equipment operations and maintenance data books that are to be incorporated into the Project manual (the "Project Operation and Maintenance Manual") at least ninety (90) days before the Scheduled Substantial Completion Date, and the final copy of the Project Operation and Maintenance Manual at least two (2) weeks before the Substantial Completion Date;
 - (b) Performance Test procedures no later than thirty (30) days prior to Substantial Completion; and
 - (c) Copies of the "as built" plans and drawings for the Project not later than the Final Completion Date.

2.6.2 As part of the Work, Contractor shall submit detailed plans, drawings, specifications for major equipment and components, flow sheets, layouts, processes, process controls, other engineering work and any modifications as identified on Appendix A to Owner and Owner's Engineer for their respective review and comment before commencement of any construction or installation with respect thereto. Owner and Owner's Engineer will promptly review such documents not later than five (5) Business Days after its receipt of such documents, and will provide its comments thereto to Contractor in writing. Any subsequent review of the documents will be completed by Owner and Owner's Engineer as promptly as possible, not to exceed five (5) Business Days. Owner shall review such documents for the purpose of determining whether such Contractor's design and engineering work is in conformity with Appendix A, and Owner may require amendments to the documents submitted to satisfy the obligations of Contractor hereunder. Review and comment by Owner shall not relieve Contractor of any of its responsibilities hereunder except to the extent Owner delays the schedule as a result of its review. The submission by Contractor to Owner and Owner's Engineer of any specification, schedule, plan, drawing or other document prepared by Contractor under this Agreement is a certification by Contractor that the information set forth therein is accurate in all material respects. Review or comment by Owner and Owner's Engineer of any document submitted by Contractor is not acceptance or approval thereof and shall not relieve Contractor from full compliance with the requirements of this Agreement.

2.7 Standard of Performance

Without limiting any of its obligations hereunder, Contractor shall be solely responsible for all construction, design and engineering means, methods, techniques, sequences, procedures and safety and security programs in connection with the performance of the Work.

2.7.1 Contractor shall perform the Work:

- (a) in a professional, prudent, economical, expeditious and workmanlike manner and with the degree of skill and care that is utilized by a prudent engineering and construction firm experienced in supplying engineering and construction services in the United States for projects of technology, complexity and size similar to the Project,
- (b) except as otherwise specified in the Technical Specifications or with the prior written consent of Owner, only with materials and equipment that are new and of high quality,
- (c) in such a manner so that the Project will be capable of meeting the Performance Guarantees,
- (d) in accordance and compliance with (i) this Agreement, (ii) the plans and specifications and accompanying data set forth in the Technical Specifications, (iii) Applicable Law, and (iv) Good Engineering Practices,

including applicable engineering, environmental, construction, safety and electrical codes and standards, and in a manner that is approved as to form, use and content by public entities authorized under Applicable Laws to administer or enforce any building or construction code or standard and whose approval of the final design of the Project, or any portion thereof, is necessary for the construction, operation or maintenance of the Project in accordance with the Applicable Laws that are in effect on the Substantial Completion Date, and

- (e) in accordance with the Contract Schedule.

2.8 Performance Bond

Within 15 days following receipt of (i) the NTP, and (ii) the 1st pro-rata payment of the fixed fee in the amount of \$214,931.80, and as a condition precedent to Owner's obligation to make any further payment to Contractor under this Agreement, Contractor shall furnish to Owner a performance bond (the "Performance Bond"). The Performance Bond will secure all obligations of Contractor under this Agreement. The cost of the Performance Bond will be paid by Contractor.

The Performance Bond shall be in form and substance reasonably acceptable to Owner and be issued by (or confirmed by) financial institutions whose long-term debt is rated at least A by Standard and Poor's or A-2 by Moody's, or another surety acceptable to Owner in its sole discretion. In the event of the occurrence of any Contractor breach or default under this Agreement, Owner may cause the surety to perform under the Performance Bond from time-to-time; provided, however, that nothing herein shall be construed as limiting Owner's recourse or remedies to such proceeds nor as requiring Owner to cause the surety to perform under the Performance Bond prior to exercising any other rights or remedies elsewhere set forth in this Agreement.

2.9 Title; Risk of Loss

- 2.9.1 Contractor warrants that (i) title to all specifications, documentation, manuals, schedules, plans, drawings and other documents produced by it and those produced or provided by Subcontractors or third party vendors and furnished to Owner under this Agreement, and all Work and Materials and Equipment required pursuant to this Agreement, shall pass to Owner upon Contractor's receipt of payment from Owner for such item, free and clear of all Liens, except for those Liens that may be created by the actions of Owner, and (ii) no Work or Materials and Equipment will have been acquired by Contractor, or by any other Person performing Work or furnishing Materials and Equipment for the Project, that is or will be subject to an agreement under which an interest therein or any encumbrance thereon is retained by the seller or otherwise imposed by Contractor or such other Person. Contractor shall warrant and defend such title, at Contractor's expense, against the claims of third parties. To the extent Owner has made partial payment in respect of any item, Owner shall have a first priority security interest in the entirety of such item to the extent of that payment.

- 2.9.2 From the date of the NTP until the Substantial Completion Date, Contractor hereby assumes the risk of loss for the Work and the Project, to the extent within Contractor's control and/or to the extent Contractor is assigned responsibility under this Agreement, including: (i) any Materials and Equipment whether on or off the Site, (ii) all other Work completed on or off the Site, and (iii) all Work in progress. Contractor will not be liable for losses to the extent caused by Owner, its employees, agents, other contractors or invitees. Risk of loss for the Project and the Work shall pass to Owner (excluding Construction Aids and other items to be removed by Contractor, which shall remain the responsibility of Contractor) on the Substantial Completion Date; provided, however, Contractor shall continue to be responsible for any claims associated with the Project or Work in accordance with its indemnification obligations under Section 6.1.

2.10 Taxes and Fees

- 2.10.1 Contractor shall be solely responsible for, administer and pay all Contractor Taxes, other than fees and charges for Permits to be obtained by Owner pursuant to this Agreement.
- 2.10.2 Owner shall be responsible for the following Taxes (collectively, "Owner Taxes"): (i) all real property Taxes assessed against the Site; (ii) all personal property Taxes assessed on, after, or in connection with the transfer or delivery to Owner of title to the Materials and Equipment at the Site; and (iii) Taxes based on or related to the income, receipts, capital or net worth of Owner or revenue generated by the operation of the Project.
- 2.10.3 Upon the failure of Contractor promptly to pay any Contractor Tax for which it is liable pursuant to Section 2.10.1, Owner may (but shall not be obligated to) pay such Tax following five (5) Business Days' written notice to Contractor, and Owner may immediately recover the Taxes so paid, together with Owner's expenses incurred by it concerning such payment from Contractor or set-off such expenses and Taxes so paid against any sums owed by Owner to Contractor.
- 2.10.4 Contractor shall cooperate with Owner to determine which purchases of Materials and Equipment or Services, if any, may be exempt or partially exempt from certain Taxes and shall provide information reasonably required by Owner to obtain such exemption, including, to the extent necessary to obtain such exemption, providing Owner with Contractor's invoices in Owner's name, address and taxpayer identification number with respect to the value of such Materials and Equipment and Services.

2.11 Utilities and Services

- 2.11.1 Owner shall provide reasonable access at Site to, at its own expense during its performance under this Agreement, all water and electric power required for the performance of the Work. All actions taken by Contractor concerning the utilities,

facilities, and services used or provided hereunder shall follow all Applicable Laws and the standards of performance set forth in this Agreement.

2.11.2 Owner will pay all water and electric power usage charges imposed by utilities during construction and performance testing of the Project from the Commencement Date until the Substantial Completion Date of the Work. Owner shall pay when due all such utility usage charges and shall arrange for the provision of utilities with local authorities and utility companies having jurisdiction over the Site.

2.11.3 Except as set forth in Section 2.12.1, Contractor shall obtain and pay for an adequate supply of all other lubricants and construction consumables, and disposal of, waste material, rubbish and generated by Contractor and its Subcontractors, in each case as necessary for Contractor's performance of the Work and its obligations hereunder.

2.12 Environmental Matters.

2.12.1 Hazardous Material. Contractor shall, and shall cause Subcontractors to, comply with all Applicable Laws and Applicable Permits relating to Hazardous Material. Without limiting the generality of the foregoing:

- (a) Contractor shall, and shall cause Subcontractors to, apply for, obtain, comply with, maintain and renew all Applicable Permits required of Contractor and Subcontractors by Applicable Laws regarding the treatment, storage, disposal, transportation and handling of Contractor Hazardous Material that are necessary, customary or advisable for the performance of the Work.
- (b) Contractor shall conduct its activities under this Agreement, and shall cause each Subcontractor to conduct their respective activities associated with this Agreement, in a manner designed to prevent pollution of the environment or any other release of any Hazardous Material by Contractor or Subcontractors in a manner or at a level requiring remediation pursuant to any Applicable Laws.
- (c) Contractor shall not, and shall not permit Subcontractors to, cause or allow the release or disposal of Contractor Hazardous Material at the Site, bring Hazardous Material to the Site, or transport Hazardous Material from the Site, except in accordance with Applicable Laws and Applicable Permits. Contractor shall be responsible for the management of and, if required, proper disposal of all Contractor Hazardous Material. Contractor shall cause all Contractor Hazardous Material (i) to be transported only by carriers maintaining valid permits and operating in compliance with such Applicable Permits and Applicable Laws pursuant to manifest and shipping documents identifying only Contractor as the generator of waste or person who arranged for waste disposal, and (ii) if required, to be treated and

disposed of only at treatment, storage and disposal facilities maintaining valid permits operating in compliance with such Applicable Permits and Applicable Laws, from which, to the best of Contractor's knowledge, there has been no release of Contractor Hazardous Material in a manner or at a level requiring remediation pursuant to any Applicable Laws. Contractor shall submit to Owner a list of all Contractor Hazardous Material prior to bringing or generating such Contractor Hazardous Material onto or at the Site. Contractor shall keep Owner informed as to the status of all Contractor Hazardous Material on the Site and disposal of all Contractor Hazardous Material from the Site.

- (d) Contractor shall prepare and submit to Owner for written approval material safety data sheets (MSDS) for all chemical and Hazardous Materials used in the Work. Notwithstanding anything in this Agreement to the contrary, Owner reserves the right to reject any Hazardous Materials from being brought onto the Site.
- (e) If Contractor or any Subcontractors release any Contractor Hazardous Material on, at, or from the Site in a manner or at a level requiring reporting or remediation pursuant to any Applicable Laws, or becomes aware of any Person who has so released or disposed of Contractor Hazardous Material on, at, or from the Site during the Work, Contractor shall immediately notify Owner in writing. If Work is taking place in the area where such release occurred, Contractor shall, and shall cause all Subcontractors to, immediately stop any Work affecting the area. Contractor shall, at its sole cost and expense, diligently proceed to take all necessary or desirable remedial action to clean up fully the contamination caused by the release of (i) any Contractor Hazardous Material, except to the extent such release was caused by the gross negligence or willful misconduct of Owner or Owner's contractors, (ii) any Pre-Existing Hazardous Materials caused by the negligence or willful misconduct of Contractor or any Subcontractors, provided that Owner first notified Contractor of the location of such Pre-Existing Hazardous Materials, designated such locations, and directed Contractor not to disturb such Pre-Existing Hazardous Materials, or (iii) any Owner Hazardous Materials that are not Pre-Existing Hazardous Materials to the extent caused by the negligence or willful misconduct of Contractor or any Subcontractors.
- (f) If Contractor or Subcontractors discover any Owner Hazardous Material at the Site, Contractor shall immediately notify Owner in writing. If Work is taking place in the area where such a discovery was made, Contractor shall, and shall cause all Subcontractors to, immediately stop any Work affecting the area and Owner shall determine a reasonable course of action. Contractor shall not, and shall cause its Subcontractors to not, take any action that may exacerbate any such contamination. Owner shall be responsible for the management of, and if required, the proper removal of, all Owner Hazardous Materials, subject to Contractor's obligations to

cooperate with and assist Owner as further described below. If Owner desires Contractor to undertake any evacuation of Persons or equipment that may become necessary as a result of the discovery of any such Owner Hazardous Material, it shall request a Change pursuant to Section 3.2. If so requested by Owner, Contractor shall cooperate with and assist Owner in making the Site available for Owner or its contractors to undertake necessary remedial steps to clean up any such contamination at Owner's expense as determined in accordance with Section 3.2. Except as otherwise provided in Section 2.12.1(e), Contractor shall have no obligation or responsibility to undertake any remedial actions with regard to any Owner Hazardous Material and shall be entitled to a Change Order for the actual and demonstrable cost and Work delay associated with any such discovery or Work stoppage pursuant to Section 3.2.

2.12.2 Waste Treatment and Disposal. Without limiting the foregoing:

- (a) Contractor shall not, and shall not permit any Subcontractor to, store or dispose of Contractor Hazardous Material near groundwater, surface water or drainage systems. Without limitation thereto, Contractor shall not, and shall not permit any Subcontractor to, dump Contractor Hazardous Material onto the ground or in any groundwater, surface water or drainage systems. Contractor shall, and shall cause each Subcontractor to, collect and dispose of all Contractor Hazardous Material waste resulting from Work construction activities in a manner that prevents contamination to soil, ground water, and surface water. Contractor shall, and shall cause each Subcontractor to, conduct vehicle maintenance in safe areas away from watercourses and collect oil or fluid runoff. Contractor shall, and shall cause each Subcontractor to, cause all Contractor Hazardous Material storage containers to be well-labeled.
- (b) Contractor shall take appropriate measures in accordance with Applicable Laws and Applicable Permits for the treatment and disposal of sanitary and solid waste brought onto or generated at the Site by it or its Subcontractors, and in particular, Contractor shall perform the Work in such a manner so as to protect environmentally sensitive areas and water supplies. Run-off from Site disposal sites used by Contractor or Subcontractors to dispose waste shall be controlled by Contractor.

ARTICLE 3 - PAYMENT TO CONTRACTOR

3.1 Contract Price.

Owner agrees to pay Contractor the Contract Price as total and exclusive compensation for the Work and all related obligations (including, any royalties or licenses related to any inventions related to the Work). Except as provided in Section 3.2, the "Contract Price" for the Project shall be \$1,039,739.00. All charges, costs, expenses and profits applicable to the Work are included in

the Contract Price. Notwithstanding anything to the contrary in this Agreement, Contractor shall be solely responsible for withholding and payment of all Contractor Taxes.

3.2 Change Orders

3.2.1 Changes. Without invalidating this Agreement, Owner may order changes in the Work consisting of additions, deletions or other revisions (a “Change”). If Owner wishes to make a Change, it shall submit a written notice to Contractor describing such Change. Contractor shall promptly review Owner’s notice and notify Owner in writing within 15 Business Days of the effect, if any, that such Change would have on the Contract Price, the Contract Schedule, the Scheduled Substantial Completion Date and/or the Performance Guarantees. Contractor may propose a Change to Owner in writing, and in such proposal shall notify Owner of the effect, if any, that such Change would have on the Contract Price, the Contract Schedule, the Scheduled Substantial Completion Date and/or the Performance Guarantees. If Contractor fails to submit a request for equitable adjustment within the prescribed fifteen (15) Business Day period after receiving Owner’s notice of Change, or if Contractor does not submit a written request for equitable adjustment with its proposed Change, Contractor shall forfeit its rights to such an adjustment but shall remain obligated to complete the Work in the Change promptly. Contractor’s request for an equitable adjustment shall include a written statement setting forth in detail, with a suitable breakdown of materials, equipment and services, Contractor’s proposed adjustment in the Contract Price or schedule or both. Labor costs in a Change will be based on Contractor’s Rate Schedule attached hereto as Appendix I.

3.2.2 A “Change Order” is a written instrument in substantially the form of Attachment 1 to Appendix H signed by Owner and Contractor and authorizing a Change in the Work and an adjustment, as appropriate, in one or more of the Contract Price, the Contract Schedule, the Scheduled Substantial Completion Date and the Performance Guarantees. The Change Order shall state with particularity: (a) the change in the Work; (b) the amount of the adjustment in the Contract Price, if any; and (c) any adjustment in the Contract Schedule, the Scheduled Substantial Completion Date and the Performance Guarantees. When Owner and Contractor agree with the determination concerning the adjustments in the Work, Contract Price, Contract Schedule, the Scheduled Substantial Completion Date, or the Performance Guarantees, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately upon signature of both Parties (or such other date as mutually agreed to) and shall be recorded by preparation and execution of an appropriate Change Order.

If the Parties cannot agree on what adjustment, if any, should be made to the Contract Schedule, the Scheduled Substantial Completion Date, the Performance Guarantees, or other aspects of the Work contained in a Change Order, Contractor shall continue the Work ordered in a Change Order pending resolution of such disagreement, and Owner shall pay Contractor any undisputed amounts associated with such Change in accordance with the payment procedures set forth in Section

4.1. If Owner and Contractor fail to reach agreement on any such adjustment within ninety (90) days of the effective date of the Change Order, Contractor and Owner shall attempt to resolve the dispute pursuant to Article 15.

3.2.3 Contractor shall be entitled to seek a Change Order pursuant to this Section 3.2 if any Change in the Work is required (i) as a result of a change in any Applicable Laws enacted after the Effective Date, (ii) as a result of unforeseen Site conditions as set forth in Section 7.2, or (iii) as a result of Uncontrollable Circumstances, in each case where Contractor demonstrates to the reasonable satisfaction of Owner that such Change materially increases the costs of the Work, materially delays the critical path of the schedule of the Work and cannot be mitigated by schedule resequencing or readjustments, is not the fault of Contractor, and Contractor's exercise of reasonable diligence could not have prevented the Change (a "Valid Change Order Request"). Except as provided in the preceding sentence, any Change Order requested by Contractor shall be subject to Owner's approval in Owner's reasonable discretion.

A Change as a result of Uncontrollable Circumstances with a cost impact greater than \$25,000 per occurrence or \$100,000 in the aggregate shall be the only basis for an equitable adjustment in the Contract Price due to Uncontrollable Circumstances so long as the requirements of this Section 3.2 have been satisfied. Notwithstanding anything to the contrary in Agreement, Contractor shall not be entitled to any extra compensation as a result of an Uncontrollable Circumstance in which it is the excused Party, except to the extent (a) resulting from (i) an unforeseen Site conditions under Section 7.2, (ii) the failure or delay in the performance of either Party for six (6) consecutive months, or (iii) the failure or delay in the performance of either Party for nine (9) cumulative months, or (b) Contractor's insurance policies required hereunder do not fully cover Contractor's costs associated with such Uncontrollable Circumstance. Any such increases in the Contract Price shall be limited to the actual, demonstrated, justified and reasonable additional costs and expenses associated with the delay or suspension of Contractor's performance of the Work resulting from the Uncontrollable Circumstance.

3.3 Time is of the Essence

Time is of the essence of this Agreement. If Contractor should fail in any respect to prosecute the Work with promptness and diligence, or if progress of the Work is such that, in the reasonable opinion of Owner, Contractor's completion by the Scheduled Substantial Completion Date is improbable, Contractor shall take such reasonable steps as Owner may deem necessary to ensure the completion of the Work by such Scheduled Substantial Completion Date, including, without limitation, increasing Contractor's labor force, the number of shifts, overtime operations, the length of the work week, and re-sequencing Work, but in any such case, Contractor shall not be entitled to any additional payment, unless additional payment is required by this Agreement or a Change Order. Neither (i) the exercise or failure to exercise such right by Owner nor (ii) any such steps taken by Contractor at Owner's direction shall relieve Contractor of its responsibility for completing the

Work by the Scheduled Substantial Completion Date or limit the rights of Owner under this Agreement.

ARTICLE 4 - TERMS OF PAYMENT

4.1 Progress Invoicing

4.1.1 Contractor Invoicing for Work Performed.

(a) On or before the first (1st) day of the month following the month in which Owner reasonably determines that Contractor achieves a milestone in accordance with Appendix I, Contractor shall deliver to Owner an application for payment in the form of Appendix H-2 setting forth the milestone achieved and the portion of payment due, as required by this Agreement (a “Payment Application”), for the period ending on the last day of the previous Payment Application consistent with Contractor’s invoicing practices and waivers and releases of liens, duly executed and acknowledged by Contractor.

(b) In the event Contractor owes Owner any amounts under this Agreement and such amounts remain unpaid thirty (30) days after notice thereof, Owner may (but shall not be required to) offset such amounts from any payment hereunder in addition to any other rights or remedies available to Owner under this Agreement, at law, in equity, or otherwise.

(c) Subject to Section 4.1.2(c), Contractor shall not cease or reduce the rate of its performance under this Agreement on account of any withholding under this Article 4.

4.1.2 Payment

(a) Payments of the Contract Price shall be made by Owner to Contractor in accordance with the Parties’ mutual agreement upon the Cost of Work in accordance with this Agreement and the schedule in Appendix I.

(b) Subject to Sections 4.1 and 4.4 and Owner’s other rights under this Agreement, Owner shall pay Contractor 100% of the undisputed portion of each Payment Application within thirty (30) calendar days after Owner’s receipt of such Payment Application. Owner has the right to request additional supporting documentation or further explanation and to dispute any matter set forth in such Payment Applications. If Owner disputes a Payment Application or any portion thereof, Owner shall pay the amount of the Payment Application that is not in dispute. Owner’s payment of any Payment Application shall not be deemed a waiver of Owner’s right to request additional supporting documentation or dispute any matter set forth in a Payment Application.

(c) If the full undisputed portion of any Payment Application is not paid within thirty (30) calendar days after Owner’s receipt of Contractor’s Payment Application (the “Payment Date”), the same shall be deemed delinquent and shall bear interest from its delinquent date at a rate equal to the Interest Rate until paid. Except as provided in Sections 4.5 and 4.6 or Owner’s other rights under this Agreement, if Contractor does not receive full payment of the undisputed portion of any Payment Application in accordance with the terms

and conditions of this Agreement (the “Undisputed Amount”) by the Payment Date and such failure continues for 30 Business Days after receipt by Owner of a Default Notice (as defined below) (the expiration of such 30 Business Day cure period is referred to herein as the “Final Payment Date”), Contractor may stop performance of the Work until it receives payment of the Undisputed Amount and the Substantial Completion milestone date shall be extended for each day beyond the Final Payment Date that the Contractor does not receive payment of the Undisputed Amount plus each day required for reasonable demobilization and remobilization. Payment by Owner of any Undisputed Amount is not an admission by Owner that the Undisputed Amount is in fact due and owing and such payment shall not prejudice any rights of Owner to seek recovery of any payment of any Undisputed Amount. “Default Notice” shall mean a written notice from Contractor to Owner notifying Owner that payment of an Undisputed Amount has not been made and specifically stating in type at least 12 point and bold **“THIS IS A DEFAULT NOTICE PURSUANT TO SECTION 4.1.2(c) OF THE EPC AGREEMENT AND FAILURE TO MAKE PAYMENT OF THE UNDISPUTED AMOUNT WILL ALLOW CONTRACTOR TO CEASE WORK AND EXTEND THE TIME FOR SUBSTANTIAL COMPLETION.”**

4.2 Reserved

4.3 Final Payment

4.3.1 Not later than 10 days after Final Completion, Contractor shall submit a Payment Application, together with final waivers and releases of liens and claims in the form of Appendix G (“Statutory Affidavit”), the information specified in Section 4.3.3 and a statement summarizing and reconciling all previous Payment Applications, payments, and Change Orders.

4.3.2 If Contractor’s final Payment Application submitted pursuant to Section 4.3.1 has been fully paid, less any Liquidated Damages due Owner, and all other undisputed amounts under this Agreement have been fully paid, then Contractor’s acceptance of payment pursuant to Section 4.3.1 shall be deemed to be a waiver of all claims by Contractor for payment of the Contract Price, except for any amounts that remain in dispute in accordance with the terms of this Agreement at the time the final payment is made.

4.3.3 The payment described in Section 4.3.1 shall not become due until Contractor submits to Owner (1) an affidavit that all payrolls, invoices of Subcontractors, invoices of indirect Subcontractors to the best of Contractor’s knowledge (after due inquiry and receipt of appropriate affidavits from the Subcontractors contracting with such indirect Subcontractors), invoices for materials and equipment and other indebtedness connected with the Work for which Owner, the Project, or the Site might in any way be responsible have been paid or otherwise satisfied or provided for by a bond or other instrument mutually acceptable to Contractor and Owner; and (2) an affidavit that Contractor has paid or discharged its obligations hereunder or to third parties concerning the performance or completion of the Work, including releases and waivers of Liens, which are in the possession of Contractor, as may be requested by Owner to establish such payment or discharge; provided however, that

if Contractor is unable to provide a certificate that a Lien has been discharged, Contractor will furnish a bond or other instrument mutually acceptable to Owner, to indemnify Owner against any such Lien; and provided further, that if any such Lien remains unsatisfied after all payments are made, Contractor shall refund to Owner after the Substantial Completion Date all monies that Owner determines, in its reasonable discretion, it may be compelled to pay in discharging such Lien, including all costs and reasonable attorneys' fees, and (3) Final Waivers and Releases from Contractor and each Subcontractor.

4.3.4 Notwithstanding anything to the contrary in this Agreement, if any Lien shall have been filed or created against the Project or the Site, or if Owner is entitled under the terms hereof to make any charge against Contractor, such part of the final payment as Owner may deem necessary shall be withheld until all such Liens and charges have been discharged by Contractor or Owner. If any Lien arises or remains unsatisfied after all payments are made to Contractor, Contractor shall promptly reimburse Owner upon demand for all amounts that Owner may pay in discharging such Lien, including all costs and reasonable attorneys' fees.

4.3.5 In order to achieve Final Completion, all of the work on the Punch List must be completed. Contractor shall diligently pursue completion of all items on the Punch List. If Contractor has not completed all items on the Punch List within a period of time, which has been mutually agreed to by Owner and Contractor to reflect the time reasonably necessary to complete the items on the Punch List, but in no event greater than ninety (90) days, Owner may (but shall not be obligated to) perform or cause to be performed the work necessary to complete the items on the Punch List and offset and/or invoice Contractor for the actual cost of such work.

4.3.6 Notwithstanding the foregoing, Contractor remains obligated to fulfill all of its obligations hereunder, and Owner shall have all remedies available to it at law or in equity (including any Owner's set off rights as elsewhere provided in this Agreement).

4.4 Disputed Payment Application

If Owner disputes any portion of a Payment Application submitted by Contractor, then the amount not in dispute shall be paid by Owner as described above and any disputed amount ultimately determined to have been payable when presented shall be paid with interest from the due date to the date of payment calculated at a rate per annum equal to the Interest Rate. If Owner makes payment to Contractor on a disputed Payment Application and it is subsequently determined that all or part of the amount paid was not properly due to Contractor, Contractor shall refund such amount plus interest at the rate per annum equal to the Interest Rate. Any portion of a Payment Application which is disputed by Owner shall be resolved in accordance with Article 15 and, once resolved, shall be paid within thirty (30) days after the date of resolution.

4.5 Payments Withheld; Set-off

In addition to any other rights or remedies available to Owner under this Agreement, at law, in

equity, or otherwise, Owner may withhold payment on a Payment Application or a portion thereof in an amount and to such extent as may be reasonably necessary to protect Owner from loss upon the occurrence of any of the following events:

- (a) Contractor's request for payment does not meet the requirements of this Agreement;
- (b) Contractor has not supplied Owner with the certification and the Final Waivers and Releases as described in this Agreement (with respect to final payment);
- (c) one or more third parties have filed a mechanics' lien or similar claim against Owner, the Project or Site, in whole or in part, and Contractor has not furnished security reasonably satisfactory to Owner to provide for the discharge thereof;
- (d) Contractor has failed to make timely payments of undisputed amounts due Subcontractors as required under applicable subcontracts (or, if Contractor withholds disputed amounts Contractor has failed to establish reserves sufficient for payment in full of such disputed amounts), so long as Owner has not wrongfully withheld payments due Contractor hereunder provided that the amount withheld as a consequence thereof may not exceed the amount of the undisputed amounts due but not paid to Subcontractors;
- (e) Contractor has failed to pay any amounts owing to Owner, provided, that the amount Owner may withhold as a consequence thereof may not exceed the amount owing to Owner;
- (f) any event which would permit a termination by Owner has occurred and is continuing;
- (g) Contractor owes Owner Liquidated Damages, in which case the amount withheld will not exceed the amount of Owner Liquidated Damages owed; or
- (h) The Project does not comply with the Performance Guarantees.

Owner may also deduct or set-off against any part of the balance of any amount due, or to become due, to Contractor. Contractor shall re-invoice at the next regular monthly Payment Application date any payment withheld under this Section once the cause for such withholding has been removed or resolved, and Owner shall make such payment, without interest, if all the conditions to the payment have been satisfied. Notwithstanding any other provision of this Agreement, Owner shall not be obligated to make any payments to Contractor at any time when Contractor is in material default of this Agreement.

Owner shall notify Contractor of Owner's intent to withhold payment and the reasons therefore prior to the date on which payment is due; provided any failure to provide such notice shall not affect Owner's right to withhold any payment. Any payments withheld by Owner pursuant to this Section shall be released to Contractor upon Owner's reasonable determination that the conditions which occasioned the withholding of payment have been satisfied.

4.6 No Liens

Contractor shall not directly or indirectly create, incur, assume or suffer to be created by any of its Subcontractors, vendors, laborers, materialmen, other suppliers of goods or services or any other Person, any Lien on the Site, Materials and Equipment, the Project, or any part of or interest in either, either by Contractor or anyone claiming by, through or under Contractor. Contractor shall promptly pay or discharge (by bond or otherwise) any such Lien for labor, materials, supplies or other charges which, if unpaid, might be or become a Lien upon the Site, Materials and Equipment, or the Project or any component of either. Contractor shall immediately notify Owner of the assertion of any Lien upon the Site, the Project or any part thereof. Upon the failure of Contractor promptly to pay or discharge any Lien as required hereby and five (5) Business Days' written notice to Contractor, Owner may, at its option, pay or discharge such Lien and immediately recover the expenses incurred by it in connection with such payment or discharge from Contractor, draw upon any security available to Owner or set off such expenses against any sums owed by Owner to Contractor.

4.7 Payment to Subcontractors

Contractor shall manage the Work and the Payment Applications so that each Subcontractor is promptly paid the amount to which said Subcontractor is entitled. Contractor shall, by an appropriate written agreement with each Subcontractor, require each Subcontractor to make payments to its Subcontractors promptly in a similar manner. Owner shall not have any obligation to pay or see to the payment of any monies to any Subcontractor.

4.8 Subcontractors' Work

- 4.8.1 Contractor may have any portion of the Work accomplished by a Subcontractor pursuant to written subcontracts or purchase orders upon the express condition that Contractor agrees that it is fully and solely responsible to Owner for the acts and omissions of its Subcontractors and Persons either directly or indirectly employed or engaged by them and provided Contractor complies with the other requirements set forth in this Section 4.8. No Subcontractor shall have any recourse to Owner, and no Subcontractor shall be deemed a third-party beneficiary of this Agreement. Nothing contained herein shall create any contractual relationship between any Subcontractor and Owner.
- 4.8.2 Contractor will ensure that Subcontractors and Persons either directly or indirectly employed by any of them comply with the insurance requirements contained in Article 8. Contractor shall provide Owner with such information concerning Subcontractors as Owner may request from time to time, except for pricing information.
- 4.8.3 In all subcontracts that Contractor enters into for the Project, Contractor shall cause the Subcontractors to agree in their respective contracts to (i) comply with Applicable Laws and Applicable Permits, (ii) if requested by Owner, assign their respective contracts, including any purchase order issued pursuant thereto, to Owner, the Lenders, or their respective designees in the event of a Contractor Event

of Default without Subcontractor's consent; (iii) indemnify and hold harmless Owner from and against all Losses (including liability to third parties) for injury to Persons or damage to property arising from such Subcontractor's negligence or willful misconduct related to its performance of its portion of the Work at the Site; (iv) name Owner as a third-party beneficiary with respect to such foregoing clauses (ii) and (iii) of this Section 4.8.3. In the event Contractor is unable to obtain a contract with a Subcontractor with terms set forth in clauses (i) through (iv) above, Contractor shall indemnify, defend and hold harmless Owner Indemnified Parties from and against any Losses resulting therefrom. Contractor shall use commercially reasonable efforts to limit any termination charges in its contracts with Subcontractors to actual and demonstrable costs incurred prior to such termination plus a reasonable profit based upon the portion of Work completed. Nothing in this subsection shall reduce Contractor's liability to Owner regarding subcontracts.

4.8.4 Contractor shall, for the protection of Contractor and Owner, obtain from the Subcontractors such guarantees and warranties with respect to Work performed and Materials and Equipment supplied as are commercially reasonable and be made available and assignable to Owner or its respective designee, to the full extent of the terms thereof through the end of the Warranty Period. Contractor shall cause the Subcontractors to agree that Owner will be an express third party beneficiary of all such guarantees and warranties. Upon the end of the Warranty Period, Contractor shall deliver to Owner copies of all relevant contracts providing for such guarantees and warranties and shall assign to Owner or the Lenders all warranties then in effect and received by it from the Subcontractors with regard to the Work.

4.9 Waiver.

Contractor hereby waives now and in the future any claim it may have relating to any Work on the basis it was not rejected by Owner, including any claims relating to the failure or inefficiency of any method of any Person used by Contractor or any Subcontractor that was not rejected by Owner or Lender.

ARTICLE 5 - WARRANTY

5.1 Warranty Terms

Subject to Section 5.2, Contractor covenants and warrants that (i) all Work (including work by Contractor and any Subcontractor) will be accomplished in a good and workmanlike manner in accordance with good construction and engineering practice, manufacturer's requirements, and Good Engineering Practice and Prudent Industry Practices, and will comply in all respects with all Applicable Law, Applicable Permits, Appendix A hereto, the Technical Specifications, and the terms and conditions of this Agreement, (ii) all materials and equipment constituting any portion of the Scope of Work will be new (unless otherwise specified in Appendix A or agreed to by Owner in writing), of good quality, and free from defects or deficiencies in design, materials, title and workmanship, (iii) any material and equipment that is not new as specified in Appendix A or otherwise agreed by Owner will, after refurbishment by Contractor, be of good quality, free from defects or deficiencies in design, materials, title and workmanship and be of a quality and service life equivalent to

new materials, parts, and equipment., (iv) the Project shall be designed, engineered and constructed to meet all of the requirements of this Agreement and to produce a fully functional Project that is capable of achieving all performance objectives of this Agreement (including without limitation, service life and efficiency as if a new facility) and of operating free of any defects in any of its components, and all professional services performed by Contractor or any Subcontractor hereunder (including without limitation, engineering and design) shall be performed competently and according to Good Engineering Practices, Prudent Industry Practices and applicable industry codes, and shall (a) conform to all requirements of this Agreement, including the Construction Documents and Technical Specifications, and (b) comply with all Applicable Laws and Applicable Permits, and (v) upon transfer of the Project to Owner, it shall be conveyed with free and clear title in accordance with, and this Agreement. It is understood that used material and equipment are not expected to be free initially from defects in material, equipment and design, and the foregoing warranty will not apply to the same, until the same has been refurbished by Contractor. The above warranty does not include equipment, materials or workmanship provided by Owner and does not include defects arising from Owner's direct misuse or Owner's failure to comply with generally approved industry practices in the operation and maintenance of the Work, unless any such act or omission was taken or made at the direction of Contractor, any Subcontractor or any of their respective Affiliates. The above warranty described in this Section 5.1 shall be effective for the Warranty Period, as the same may be extended pursuant to Section 5.2; provided, however, that there shall be no time limit regarding free and clear title. Following the Substantial Completion Date, Contractor shall assign to Owner all manufacturers' and Subcontractor's warranties corresponding to the materials, equipment, components, or systems installed as part of the Work.

5.2 Defects

If Contractor or Owner shall discover any defect, deficiency or failure of the Work, or any Materials and Equipment covered by the warranty described in Section 5.1 or any other breach of the warranty provided in Section 5.1 above, then Contractor, promptly after discovery by it, will notify Owner of such defect, deficiency or failure, and shall, or upon written notice from Owner, promptly correct such defect, deficiency or failure at the expense of Contractor and to the reasonable satisfaction of Owner by, at Contractor's option, redesigning, repairing and/or replacing the defective, deficient or failed Work and conforming the Work to the requirements of this Agreement. Contractor shall use its reasonable efforts (including the use of overtime and double shifts) to cause the correction of any such defect, deficiency or failure to be accomplished with minimal interference with the operation or maintenance of the Project. Owner shall provide access to the Project, including shutdown, if necessary, in order to permit Contractor to perform its warranty work, provided that Contractor shall cooperate with Owner to minimize the effect of such warranty work on the Project's operations.

All costs incidental to such corrective action, including removal, disassembly, transportation, all labor, reinstallation, reconstruction, retesting and reinspection as may be necessary to correct the defect, deficiency or failure or demonstrate that the previously defective, deficient or failed Work conforms to the requirements of this Agreement, shall be borne by Contractor. The Warranty Period established by Section 5.1 for a replaced part will be extended for one (1) year from the date of replacement for each part that Contractor or Owner replaces pursuant to this Section 5.2. However, in no event shall such warranty period exceed thirty (30) months following the Substantial

Completion Date. Should Contractor fail to promptly make the necessary redesign, repair, replacement and tests, Owner may perform or cause to be performed the same at Contractor's expense.

5.3 Reserved

5.4 Patent and Other Proprietary Rights

Without affecting any other of Contractor's obligations under this Agreement, if use of any part of any equipment, material or process or any other portion of the Work or any part thereof furnished by Contractor under this Agreement is limited or prohibited in any way because such use would constitute an infringement of any patent, trade secret, trademark, copyright or other proprietary rights, Contractor, at its sole expense and with Owner's prior written approval, shall (i) procure (or hereby grants in the case of such matters owned by Contractor) irrevocable, perpetual, transferable (in connection with the transfer of the Project), royalty fee, fully-paid licenses for Owner, and its successors and assigns to use the infringing equipment, material or process or any other portion of the Work, (ii) with Owner's prior written approval (which may be conditioned on receipt of compensation to Owner for any period of reduction or cessation of operation of the Project necessitated by the same), replace the same with substantially equal but non-infringing equipment, materials or processes or other matters, or (iii) modify the same to be non-infringing; provided, however, that any such substituted or modified equipment, materials or processes or other matters shall meet all the requirements and be subject to all the provisions of this Agreement, and that such replacements or modifications shall not modify or relieve Contractor of its obligations under this Agreement. This provision shall survive the delivery, Substantial Completion and Final Completion Date, the expiration of any Warranty Period hereunder and the expiration or termination of this Agreement.

5.5 Reserved

5.6 Warranty Disclaimers

EXCEPT AS PROVIDED IN THIS AGREEMENT, NO IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OTHER THAN THAT PURPOSE SPECIFIED HEREIN, SHALL APPLY. THE REMEDIES FOR BREACH OF ANY WARRANTY OF CONTRACTOR PROVIDED IN THIS AGREEMENT ARE THE EXCLUSIVE REMEDIES OF OWNER AND THE SOLE LIABILITY OF CONTRACTOR ARISING OUT OF CLAIMS FOR BREACH OF WARRANTY UNDER THIS AGREEMENT.

ARTICLE 6 - INDEMNIFICATION

6.1 Indemnification

- 6.1.1 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner, its Affiliates, and their respective shareholders, partners, principals, members and other direct or indirect equity holders, directors, managers, officers, employees and agents or consultants, and each of their successors and assigns (each, an "Owner Indemnified Party"), for any and all Losses arising out of or relating to (i) bodily injury (including death), property damage or other liability to the extent such Losses arise from the willful or negligent actions or omissions of Contractor, any Subcontractor or any of their respective Affiliates, employees,

officers, agents or invitees or guests, (ii) any failure to comply with Applicable Laws or Applicable Permits by Contractor, any Subcontractor or any of their respective Affiliates, employees, officers, agents or invitees or guests, (iii) any claim, demand or Lien by Contractor or any Subcontractor or any of their respective officers, employees, agents or vendors, or invitees or guests, including for nonpayment of amounts due in connection with any part of the Work (provided Owner has paid all undisputed amounts then due to Contractor in respect of the same), (iv) any discharge, emission, spill, release or threatened release, disposal (or arranging the disposal), distribution, manufacture, processing, storage, treatment, transportation or other use of Contractor Hazardous Material, or any Owner Hazardous Material for which Contractor is responsible under Section 2.12, (v) any Governmental Authority claiming taxes based on the income of Contractor, any of its Subcontractors or vendors or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor, any of its Subcontractors, or any of their respective agents or employees under this Agreement, or any failure of Contractor to pay any taxes required to be paid by Contractor pursuant to this Agreement, including any Contractor Taxes, (vi) any claim or legal action by a third party for unauthorized disclosure or use of any trade secrets, proprietary rights or intellectual property rights, or of patent, copyright or trademark infringement arising from Contractor's performance (or that of its Subcontractors) under this Agreement and/or asserted against an Owner Indemnified Party that either (a) concerns any equipment or other items provided by Contractor or any Subcontractor or vendor under this Agreement; (b) is based upon the performance of the Work by Contractor or any Subcontractor or vendor, including the use of any tools, implements or construction equipment by Contractor or any Subcontractor or vendor; or (c) is based upon the design or construction of any item or unit specified by Contractor under this Agreement or the operation of any such item or unit in accordance with directions provided by Contractor, and (vii) any failure of Contractor to satisfy and discharge any of its liabilities or obligations under this Agreement.

6.1.2 In any and all claims against an Owner Indemnified Party, by any employee of Contractor or any Subcontractor or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation stated above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under the applicable workers' compensation act, disability acts or other employee benefit acts.

6.1.3 To the fullest extent permitted by law, Owner agrees to indemnify fully, defend and hold harmless Contractor, its Affiliates, and their respective shareholders, partners, principals, members and other direct or indirect equity holders, directors, managers, officers, employees and agents, and their successors and assigns (each, a "Contractor Indemnified Party"), from and against any and all Losses (i) for bodily injury (including death), property damage or other liability to the extent such Losses arise from the negligent actions or omissions of Owner, its employees, officers, other contractors, invitees or agents (other than Contractor, Subcontractors and its

or their employees, invitees or agents), (ii) on account of any violation by Owner, its employees, officers or agents (other than Contractor, Subcontractors and its or their employees, invitees or agents) of laws, codes, ordinances or regulations with which such Persons are required to comply under Applicable Law and which relate to the Project, or (iii) any discharge, emission, spill, release or threatened release, disposal (or arranging the disposal), distribution, manufacture, processing, storage, treatment, transportation or other use of any Owner Hazardous Material or Pre-Existing Hazardous Material for which Contractor is not responsible under Section 2.12.

6.1.4 If Owner is enjoined from completion of the Project or any part thereof, or from the use, operation or enjoyment of the Project or any part thereof as a result of such claim or legal action or any litigation based on a claim for which Contractor is obligated to indemnify as set forth above, Contractor shall promptly arrange to have such injunction removed, at its sole cost and expense. If Owner is prevented from using the Work due to any infringement of patent, registered design, copyright, trademark, trade name or other intellectual property right and Contractor is unable within ninety (90) days after notice thereof from Owner to procure the removal at its own expense of the cause of prevention then, in case of an infringement which is the subject of Contractor's indemnity to Owner under Section 6.1.1, Owner shall be entitled to all rights and remedies available hereunder, including, without limitation, its rights pursuant to Section 5.4 and Owner may treat such prevention as an Event of Default by Contractor and exercise the powers and remedies available to it under Section 10.1.

6.1.5 Owner's acceptance of Contractor's engineering designs, drawings or specifications and/or Contractor's selection of equipment shall not be construed to relieve Contractor of any obligation under this Section 6.1.

6.2 Procedure

Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation or any other matter as to which the indemnity provided for in Section 6.1 may apply, such Indemnified Party shall notify the applicable Indemnitor of such fact. Failure of the Indemnified Party to give such notice will not reduce the liability of the Indemnitor unless and to the extent such Indemnitor can demonstrate that it was materially precluded from defending such claim or litigation as a result of the failure of the Indemnified Party to give such notice. The Indemnitor may or, if so requested by the Indemnified Party shall, assume the defense thereof, after notice from it to such Indemnified Party of an election to assume the defense thereof and with counsel designated by it and reasonably satisfactory to the Indemnified Party, and the Indemnitor shall not be liable to such Indemnified Party under Section 6.1 for any legal fees or expenses subsequently incurred by such Indemnified Party in connection with the defense thereof so long as such defense continues to be diligently pursued. No Indemnified Party shall settle any indemnified claim over which the Indemnitor has not been afforded the opportunity to assume the defense without such Indemnitor's reasonable approval. The Indemnitor shall control the settlement of all claims over which it has assumed the defense; provided, however, that the Indemnitor shall not conclude any settlement that requires any action or forbearance from

action by the Indemnified Party, or any of its Affiliates without the prior approval of such Indemnified Party, which approval will not be unreasonably withheld, delayed or conditioned. The Indemnified Party shall provide reasonable assistance to the Indemnitor, at the Indemnitor's expense, in connection with such legal action or claim. Notwithstanding anything to the contrary in this Article 6, the Indemnified Party (and their respective representatives) shall have the right, at its expense, to participate, be present, monitor and consult with the Indemnitor's counsel in connection with any such legal action, proceeding, or claim; provided, however, if (a) the named parties to such action (including any impleaded parties) include both the Indemnified Party and the Indemnitor and (b) representation of such named parties by the same counsel would, in the reasonable opinion of such Indemnified Party, be inappropriate under applicable standards of professional conduct due to actual or potential conflicting interests between them, then such Indemnified Party may retain separate counsel at the Indemnitor's expense.

6.3 Failure to Defend

Should any Indemnified Party be entitled to indemnification under Section 6.1 as a result of a claim by a third party, and should the Indemnitor fail to assume the defense of such claim after receiving notification thereof as provided in Section 6.2, then such Indemnified Party may, at the expense of the Indemnitor, contest or settle such claim at its sole discretion notwithstanding the restrictions and prohibitions set forth in Section 6.2.

6.4 Survival

The indemnification provisions contained in this Article 6 shall survive the Final Completion Date and the expiration or termination of this Agreement.

ARTICLE 7 - THE SITE

7.1 Access Rights in Site

- 7.1.1 Owner shall grant Contractor reasonable access to enter upon and use the Site for the purpose of performing the Work. Owner does not guarantee Contractor continuous, uninterrupted work or uninterrupted access to the Site. However, Owner shall provide such access as good construction practices will allow, taking into account the other activities in the area, in order that Contractor may perform its obligations under this Agreement. Contractor shall occupy and use the Site solely to perform the Work according to the provisions of this Agreement. Contractor shall not occupy or use any part of the Site for any purpose, operation or use, which is not necessary, or incidental to the purposes set forth in this Agreement. Contractor shall cooperate with and shall not delay, impede or otherwise impair the work of others.
- 7.1.2 Owner shall have the right to have representatives on the Site full time, including Owner's Representative and Owner's Engineer. Contractor shall provide access to the Site and the Work thereon at all times to Owner and Owner's contractors. Owner, Owner's Representative, Owner's Engineer and Owner's contractors shall comply with Contractor's written security and safety guidelines provided to Owner by Contractor while on the Site and shall not hinder the performance of the Work.

7.2 Site Acceptance

- 7.2.1 Contractor acknowledges that it has received the Geotechnical Report and after careful evaluation thereof, (i) Contractor has satisfied itself as to the nature and location of the Site, the suitability of the Site for the performance by Contractor of the Work, the character of equipment and facilities needed before and during construction of the Project, the general and focal conditions and all other matters relating to the Site which may in any way affect the performance of Contractor under this Agreement, and (ii) Contractor has found the same to be acceptable and satisfactory.
- 7.2.2 Contractor shall promptly notify Owner upon discovery of (i) any previously unknown physical conditions (including without limitation, unknown subsurface conditions) at the Site of an unusual nature, not revealed by previous investigations and differing from those ordinarily encountered in work of the character provided for in this Agreement and (ii) the presence of any Pre-Existing Hazardous Materials or artifacts, relics, resources or items of archeological, historic or cultural value.
- 7.2.3 Contractor expressly assumes any and all risks associated with surface and subsurface conditions at, below or near the Site that are reasonably foreseeable from the content of the Geotechnical Report, both usual and unusual, known and unknown, including soils, groundwater, terrain, compaction, geology and such other physical characteristics thereof or any materials, structures or other conditions below the surface of the ground.
- 7.2.4 Contractor shall not be entitled to an adjustment in either of the Contract Price or the Scheduled Substantial Completion Date due to any subsurface condition, except for (i) Pre-Existing Hazardous Materials at the Site or (ii) previously unknown subsurface conditions that could not be reasonably foreseen from the content of the Geotechnical Report. If the presence at or under the Site of (i) previously unknown subsurface conditions, or (ii) Pre-Existing Hazardous Materials, which could not be reasonably foreseen by the content of the Geotechnical Report shall cause a demonstrable and material increase in Contractor's cost of, or the time required for, performance of any part of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or an extension in the Scheduled Substantial Completion Date pursuant to a Change Order processed pursuant to Section 3.2, or both.
- 7.2.5 Upon the discovery of any Pre-existing Hazardous Materials or artifacts, relics, resources or items of archeological, historic or cultural value at the Site, Contractor shall (i) promptly cease work in all reasonably affected areas and direct all workers and Subcontractors not to remove or disturb the material or item, (ii) promptly notify Owner of such discovery, (iii) use all reasonable efforts to mitigate the effects of any such discovery on the performance of the Work, and (iv) follow any and all reasonable direction of Owner with respect to such discovery; provided, however, Contractor assumes no obligation to handle, contain, transport or dispose of any Pre-Existing Hazardous Materials except as otherwise provided in this

Agreement. Contractor shall use all reasonable efforts not to exacerbate any Pre-Existing Hazardous Materials. The nature and extent of any remediation of any Pre-Existing Hazardous Materials or any artifacts, relics, resources or items of archeological, historic or cultural value shall be determined by Owner, and at Owner's option, Contractor shall be responsible for and shall perform any necessary remediation in connection therewith pursuant to a Change Order. Any item of value or any artifact, relic, resource or items of archeological, historic or cultural value shall not be deemed owned by Contractor.

7.3 Security of Site

Without limitation to Article 9, to the extent within Contractor's control, during the period commencing upon Contractor's initial access to the Site pursuant to the Notice to Proceed until the Substantial Completion Date, Contractor shall be solely responsible for the impact of the Project on the Site, including but not limited to, the Project, all Material and Equipment located thereon or incorporated therein, and all Persons at the Site, and, to the extent affected by the performance of the Work, Contractor shall protect public and private property that is at or near the Site from any adverse impacts of the Work.

ARTICLE 8 - INSURANCE

8.1 Owner's Insurance

For the period commencing with Notice to Proceed and ending with Final Completion (or longer period as may be required by this Agreement), Owner will obtain and maintain the insurance policies outlined in Part 1 of Appendix F (the "Owner Insurance Policies"). Contractor will cooperate with Owner at Owner's request should Owner desire the Builder's Risk Policy (or other insurance) to be transferred to Contractor. Contractor will cooperate with Owner and its insurance carriers in all reasonably requested ways (at no additional cost) to administer any Owner Insurance Policies.

8.2 Contractor's Insurance

For the period commencing with the NTP and ending with Final Completion, unless otherwise extended in this Article 8, Contractor shall obtain and maintain, and if not covered under Contractor Insurance Policies, Contractor shall cause its Subcontractors to obtain and maintain, the insurance policies outlined in Part 2 of Appendix F (the "Contractor Insurance Policies"). Contractor will ensure that Owner is and continues to be an additional-insured in respect of the insurances outlined therein (other than Worker's Compensation Insurance). The Contractor Insurance Policies and the Owner Insurance Policies are sometimes collectively or individually referred to as the "Required Policies".

8.3 Certificates

Each Insuring Party shall provide the Non-Insuring Party, and such other interested Persons as may be designated by the Non-Insuring Party, with insurance certificates and amendatory

endorsements evidencing the Required Policies of the Insuring Party within five (5) days after the execution of this Agreement, which certificate for Contractor will reflect that Owner has been added as an additional-insured in respect of the insurances outlined therein. The Owner reserves the right to require from the Contractor, at any time, complete, certified copies of all insurance policies required by this Agreement, including endorsements effecting coverage required by this Agreement, listing the coverages, limits, named insureds, additional insureds and periods that such policies shall be in effect. The Non-Insuring Party's failure to receive certificates of insurance in accordance with this Agreement shall not relieve Insuring Party of the insurance requirements set forth in this Agreement.

8.4 Waivers of Subrogation

All Contractor Insurance Policies shall provide for waiver of subrogation against Owner, its contractors, subcontractors and all of their assignees, affiliates, agents, officers, directors, managers, employees and insurers.

8.5 Compliance

Each Insuring Party shall obtain and maintain its Required Policies in accordance with (i) all rules, orders, regulations, requirements and recommendations of the State of California or any applicable department, office or division thereof, (ii) the requirements of the applicable insurances and insurance companies, or agents thereof, that issued such Required Policies and (iii) the requirements of Article 8. The Insuring Party shall not violate or knowingly permit any violation of any conditions or terms of the Required Policies nor do or omit to do anything at any time to cause any of its Required Policies to become void or voidable at any time. In addition, Contractor shall comply with all warranty requirements or other requirements set forth in all policies related to the Materials and Equipment.

8.6 Claims

8.6.1 Contractor shall notify Owner in writing when Contractor proposes to make a claim related to this Agreement under the insurances listed in Appendix F.

8.6.2 Contractor shall be responsible for assisting Owner in prosecuting all claims under the insurances listed in Appendix F.

8.7 Insurance Proceeds

All insurance proceeds collected under the insurances listed in Part 1 of Appendix F for physical loss or damage shall, at the direction of Owner, and subject to the insurance provisions, be applied forthwith by Contractor in reconstruction or replacement of the Work. If such reconstruction or replacement Work requires the replacement of a piece of equipment or part that was used or refurbished when originally installed as part of the Work with a new and unused piece of equipment or a part, Owner shall be responsible for compensating Contractor in an amount equal to (i) the cost of the new and unused piece of equipment or part, minus (ii) the portion of the insurance proceeds allocable thereto paid to Contractor, if any. Contractor shall be entitled to compensation for such reconstruction or replacement Work at its (or its Subcontractors') standard rates plus expenses incurred; provided, that, except as provided in the immediately preceding sentence, Contractor's compensation shall not exceed

the values in the Project Payment Schedule for the comparable Work (including time, Materials and Equipment). To the extent that insurance proceeds are not recovered for the cost of materials or equipment that need to be repaired or replaced, and labor associated with such repair or replacement, in order to complete the Work, a Change Order shall be issued to increase the Contract Price by the amount of such costs. The compensation provided for in this Section 8.7 will be Contractor's only entitlement to payment for reconstruction or replacement of the Work, and shall be set forth in a Change Order agreed to between the Owner and the Contractor.

8.8 Insurance Carrier Standards

All insurances outlined in Part 2 of Appendix F shall be maintained with insurance companies rated "A-" or better, with a minimum size rating of "X" by Best's Insurance Guide and Key Ratings (or an equivalent rating by another widely recognized insurance rating agency of similar standing) or other insurance companies of recognized financial responsibility satisfactory to Owner.

8.9 Other Duties of the Parties regarding Insurance

8.9.1 Maintenance of Required Policies. All Required Policies required by this Agreement, shall be in full force and effect at least until the Final Completion Date (or for such longer period as may be required under this Article 8) and at all times thereafter when Contractor may be erecting, removing or replacing any Work that contains a defect. If any such policy is cancelled, is terminated or expires prior to the Final Completion Date, the Party required to maintain such policy (the "Insuring Party") shall immediately procure replacement or renewal coverage (unless it is not available on commercially reasonable terms and conditions) and shall provide a new current certificate and endorsement to the other Party (the "Non-Insuring Party") or be declared in material breach of this Agreement. Any new or renewal insurance coverage, and any new current certificate and endorsement thereof, shall be in accordance with the terms of this Agreement.

8.9.2 Notice of Cancellation, Termination, Non-Renewal or Material Change. The Insuring Party shall, and Contractor shall cause its Subcontractors to, immediately notify Owner of any cancellation, termination, non-renewal or material change of any insurance policy or, to Contractor's, or any of its Subcontractor's, knowledge, any pending or threatened cancellation, termination, non-renewal or material change of any insurance policy or any event or circumstance which has led, or in the opinion of the Insuring Party (acting reasonably), or any of its Subcontractors (acting reasonably), is likely to lead to a breach by the Insuring Party of any term of this Article 8. Each Insuring Party shall require its insurers to provide not less than thirty (30) days prior written notice to the Non-Insuring Party in the event such insurer seeks to cancel or modify any insurance policy.

8.9.3 Deductibles. The Insuring Party shall be responsible for any deductibles contained within its Required Policies; provided, however, Contractor shall be obligated to pay the first \$25,000 of any deductibles or any Claims against any Owner Insurance Policies if claims caused directly or indirectly by Contractor.

8.9.4 Management and Administration of Required Policies. Except as directed by the Non-Insuring Party, the Insuring Party shall be responsible for, and shall act in a commercially reasonable effort in, managing and administering all of its Required Policies, including the payment of all deductibles and self-insured retention amounts, the filing of all claims and the taking of all necessary and proper steps to collect any proceeds on behalf of the relevant insured Person. The Insuring Party shall at all reasonable times keep the Non-Insuring Party informed of the filing and progress of any claim. If the Insuring Party shall fail to perform these responsibilities, the Non-Insuring Party may take such action as it determines appropriate under the circumstances. In the event the Insuring Party collects proceeds on behalf of other Persons, it shall ensure that these are paid directly from the insurers to the relevant Person and, in the event that it receives any such proceeds, it shall, unless otherwise directed by the Non-Insuring Party, pay such proceeds to such Party forthwith and prior thereto, hold the same in trust for the recipient.

8.9.5 Remedy for Failure to Insure. In the event that the Insuring Party neglects, refuses or fails to provide or maintain any of its Required Policies in full force and effect at all times required under this Article 8, or if such insurance is cancelled for any reason, the Non-Insuring Party shall have the right, but not the obligation, in addition to any other remedies it may have, to obtain and keep in force any such required insurance policy and pay such premium or premiums as may be necessary for that purpose and recover from the Insuring Party whether by way of deduction, offset or otherwise the cost of obtaining and maintaining any of its Required Policies.

8.10 Subcontractor Insurance.

8.10.1 Before permitting any of its Subcontractors to perform any Work at the Site, Contractor shall include all such Subcontractors as additional insureds under each of its Contractor Insurance Policies, or shall require that all such Subcontractors are subject to the insurance and indemnity requirements contained herein (excepting policy limits, which shall be established relative to the contract price for each such subcontract) and furnish separate certificates and endorsements for each Subcontractor to Owner for review and approval.

8.10.2 All coverages for Subcontractors shall be primary, not excess to or contributing with any insurance or self-insurance maintained by either Party and shall be subject to all requirements stated herein (provided that policy limits of policies required of Subcontractors may be proportional to the value of the applicable contract or subcontract and applicable risk) and Contractor shall obtain a certificate of insurance from each such Subcontractor evidencing that such Subcontractor has obtained the insurance required of Subcontractors by Contractor if such Subcontractor is not covered under the Contractor Insurance Policies.

- 8.10.3 The fact that any Subcontractor obtains or maintains insurance coverage in accordance with this Article 8, shall not relieve Contractor of its obligation to obtain and maintain for itself the insurance coverage set forth in this Article 8.
- 8.10.4 To the extent that Contractor does not require, or the Subcontractors do not obtain and maintain insurance coverage, Contractor shall defend, indemnify and hold Owner harmless from all claims, demands, losses, expenses and judgments to which the said insurance (including such waivers) would have applied.
- 8.11 Insuring Party's Waiver. The Insuring Party releases, assigns and waives, and Contractor shall cause each Subcontractor to release, assign and waive, any and all rights of recovery against the Indemnified Persons and any and all of their successors, permitted assigns, Affiliates, Affiliated Persons, volunteers, subcontractors, insurers and underwriters, or by anyone directly or indirectly employed or engaged by any of them, which the Insuring Party may otherwise have or acquire in connection with any loss covered by policies of insurance maintained or required to be maintained by the Contractor or Subcontractor pursuant to this Agreement or because of deductible clauses in or inadequacy of limits of any such policies of insurance. Notwithstanding the foregoing, the release, assignment and waiver made by the Insuring Party in this Section will not be deemed a release, assignment or waiver of any claims or counterclaims an Indemnifying Party may have against an Indemnified Party arising pursuant to this Agreement.
- 8.12 No Limitation of Liability. The obligations the Insuring Party to procure and maintain its Required Policies in accordance with this Article 8 or the Insuring Party's failure to procure and maintain its Required Policies in accordance therewith, shall in no way be construed to waive, limit or restrict the Insuring Party's obligations and liabilities under this Agreement. No limitation of liability provided to the Insuring Party under this Agreement is intended to, nor shall it, run to the benefit of any insurance company or in any way prejudice, alter, diminish, abridge or reduce, in any respect, the amount of proceeds of insurance otherwise payable to the Non-Insuring Party under coverage required to be carried by the Insuring Party under this Agreement, it being the intent of the Parties that the full amount of insurance coverage bargained for be actually available notwithstanding any limitation of liability contained in this Agreement, if any. The Non-Insuring Party assumes no responsibility for the solvency of any insurer or the failure of any insurer to settle any claim.
- 8.13 No Claims. Each Party hereby represents and warrants to the other Party that, as of the date of this Agreement, such Party is not aware of (i) any claims that have been made that could materially threaten any of its Required Policies; or (ii) any potential or threatened claims that could materially threaten any of its Required Policies.

ARTICLE 9 - SAFETY

9.1 Generally

Contractor shall have sole responsibility for all construction means, methods, techniques, sequences and safety and security programs in connection with the performance of the Work.

- 9.1.1 At all times in the course of performing this Agreement, Contractor shall exercise every reasonable precaution to protect Persons, property and items of Work. At its own expense, Contractor shall design, furnish and erect such barricades, fences and railings, give such warnings, display such lights, signals and signs, exercise such precautions against fire, adopt and enforce Applicable Laws, and take such other precautions as may be necessary or appropriate. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Extinguishing equipment shall be periodically inspected by Contractor and shall at all times be accessible and ready for immediate use.
- 9.1.2 Contractor shall be responsible for the safety of all Contractor and Subcontractor employees and all Contractor and Subcontractor visitors on the Site. Contractor shall at a minimum comply with the Owner's safety program established at the Site (Appendix B). Contractor's administration and enforcement of the safety program shall not be construed to impose on it any liability or responsibility for the actions of Owner's employees, representatives, guests or contractors for work not included in the scope of this Agreement. While on or about the Site, Contractor shall observe and comply with all applicable Federal, State and Local safety standards. Without limiting the generality of the foregoing, safety hats shall be worn at all times on the Site by all site personnel and visitors.
- 9.1.3 At no additional cost to Owner, Contractor shall comply with all safety/regulatory requirements. If Owner reasonably determines Contractor is not in compliance with the standards set forth in this Agreement, Owner may hereunder order an immediate suspension of the Work (and in such event Contractor shall not be entitled to a Change in the Contract Schedule or otherwise), or take such steps as it deems necessary to protect Work, property or Persons. In the event Contractor has not adequately protected the Work, property or Persons in the performance of the Work, the cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor and Contractor shall not be compensated for its own costs arising from such suspension.
- 9.1.4 Contractor shall promptly report in writing to Owner all recordable accidents whatsoever arising out of or in connection with the performance of this Agreement, whether on or adjacent to the Site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death, serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Owner.

- 9.1.5 Contractor shall provide at the Site such equipment and medical facilities as are necessary to supply first aid service to any Persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such Persons. If any claim is made by any Person against Contractor or any Subcontractor on account of any accident, Contractor shall promptly report it in writing to Owner, giving full details of the claim.
- 9.1.6 If, in the reasonable opinion of Contractor, greater precautions than those required by regulations or Appendix B are necessary, Contractor shall implement such precautions and advise Owner thereof. In the event of an emergency threatening injury to Persons or damage to property, Contractor shall immediately (i) take all necessary action and (ii) notify Owner by telephone thereof.
- 9.1.7 Contractor shall ensure that all vehicles, including those of Subcontractors and vendors, used in the performance of the Work are maintained in good working condition and are not leaking any fluids. Contractor shall pay particular attention, without limitation, to hydraulic and lubrication systems on each vehicle. Contractor shall require any driver to eliminate any leak or spill before leaving the Site, and to promptly notify Owner of any such leak or spill. Contractor shall reimburse Owner for all costs associated with the cleanup of leaks and spills.
- 9.1.8 Contractor shall ensure that the Work complies with the Federal OSHA regulations and similar Applicable Laws established in the State of California.

ARTICLE 10 - TERMINATION AND CANCELLATION

10.1 Owner Rights

Should any Event of Default occur with respect to Contractor, Owner may, while such Event of Default is continuing, retain as its option the right to make a claim for and recover damages, the right to require specific performance or the right to terminate this Agreement and enter upon the Site and (i) take possession of all of Contractor's Construction Aids, supplies and drawings for the purpose of completing the Work, (ii) succeed automatically, and without any consent of or further action by Contractor, to the interests of Contractor under any and all subcontracts with respect to the Work, and Owner shall be required to compensate such Subcontractors only for compensation becoming due and payable from and after the date Owner succeeds to the interests of Contractor thereunder (and Contractor shall, upon Owner's request, provide assignments of all subcontracts confirming in writing the foregoing), and (iii) pay Contractor for all Work completed to Owner's reasonable satisfaction prior to the termination. Upon any such termination, Owner shall have the right to finish the Work itself or with the assistance of third parties. After Owner's completion of the Work, Owner shall make available for removal by Contractor all Construction Aids belonging to Contractor and used by Owner and, to the extent any of the same is damaged due to misuse by Owner, Contractor shall be entitled to reasonable compensation for the same after deduction of applicable insurance proceeds. At Owner's option, such compensation may be deducted from any amount owed by Contractor under this Agreement or paid to Contractor. Any amount payable by Contractor under this Section 10.1 shall be paid no later than thirty (30) days after notice of such amount from Owner, which notice may be given from time to time as such amounts become payable. The remedies in this Section 10.1 provided in favor of Owner

shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in Owner's favor existing at law or in equity. For avoidance of doubt and notwithstanding anything to the contrary in this Agreement, damages incurred by Owner for any breach of this Agreement by Contractor may include, without limitation Owner's costs and expenses to complete the Work in excess of the Contract Price in the event this Agreement is terminated by reason of Contractor's breach or default hereunder. Owner shall have the right to assign all or any portion of the rights of Owner specified in this Section 10.1 to one or more Lenders at any time and without the consent of Contractor.

10.2 Cancellation or Suspension by Owner

- 10.2.1 For any cause, without cause, and solely at its discretion, at any time (whether before or after the Notice to Proceed) Owner may cancel or suspend all or a portion of the Work hereunder by giving written notice to Contractor, and Contractor shall provide for similar rights with all Subcontractors in its subcontracts. Should the Work be canceled by Owner for any reason other than an Event of Default by Contractor, Contractor shall be paid within thirty (30) days of receipt of a final Payment Application computed on the basis of the percentage of the Work which has been appropriately completed at the time of cancellation, plus the reasonable costs of demobilization and the cancellation of Subcontractors. Upon such payment, title to all Work then in existence shall transfer to Owner.
- 10.2.2 Unless as a result of an Event of Default by Contractor, in the event of suspension due to a Valid Change Order Request, Contractor shall be entitled to seek an equitable adjustment, pursuant to a Change Order, of the Contract Schedule to the extent that such suspension causes delay to Contractor in the completion of any Work or the failure to timely achieve any milestones specified in the Contract Schedule. In addition, Contractor shall be entitled to seek reimbursement for the following amounts following a suspension due to a Valid Change Order Request, subject to audit by Owner:
- (a) a reasonable standby charge during the period of suspension to compensate Contractor for keeping, to the extent required in the suspension notice, its organization and equipment committed to the Work on a standby basis;
 - (b) all reasonable costs associated with demobilization and remobilization of Contractor's plant, forces and equipment;
 - (c) an equitable amount to reimburse Contractor for the cost of maintaining and protecting that portion of Work upon which performance has been suspended; and
 - (d) any costs incurred by Contractor pursuant to Section 10.2.4 to make good any deterioration in the Work, to the extent the same has occurred despite Contractor's compliance with Section 10.2.3(c).
- 10.2.3 Upon receipt of the notice of suspension or cancellation and to the extent specified in the notice, Contractor shall:

- (a) immediately discontinue work, provide a status report of all systems and contracts, and place no further orders or lower-tier subcontracts for materials, services or facilities;
- (b) promptly obtain cancellation or suspension upon terms reasonably satisfactory to Owner of all purchase orders, lower-tier subcontracts, rentals or any other agreements existing for performance of the Work, or assign those agreements to Owner or Lender as directed by Owner;
- (c) assist Owner in the maintenance, protection and disposition of work in progress, plant, tools, equipment, property and other materials until further instructed by Owner; and
- (d) take any other reasonable steps to minimize costs associated with such suspension or cancellation.

10.2.4 After receipt of permission or of an instruction to proceed, Contractor shall resume the Work as soon as possible and shall, after notice to Owner's Representative, and together with Owner's Representative, examine the Materials and Equipment and other parts of the Project affected by the suspension. Contractor shall make good any deterioration in or loss of any component of the Project or Materials and Equipment which has occurred during the suspension.

10.3 Owner's Right of Termination for Uncontrollable Circumstance Delay

Owner may terminate this Agreement upon thirty (30) days written notice in the event of a delay or suspension lasting at least sixty (60) continuous days which is caused by Uncontrollable Circumstances. In the event Owner elects to terminate pursuant to this Section 10.3, Contractor shall be compensated as provided in Section 10.2 hereof.

ARTICLE 11 - PERFORMANCE TESTING; PROJECT COMPLETION; TRANSFER

11.1 Contract Schedule

Contractor shall commence the Work upon Notice to Proceed, and shall prosecute the Work, continuously and with due diligence, so as to achieve the milestones stated below no later than the dates listed in Appendix C (the "Contract Schedule").

11.2 Mechanical Completion

11.2.1 "Mechanical Completion" shall occur following the satisfaction of all of the following conditions:

- (a) The Project has been completed and physically constructed in accordance with this Agreement, including, as applicable, hydrostatic and pneumatic pressure tests, electrical continuity and ground fault tests and other

mechanical and electrical tests, calibrations, clean-outs and flushes, all as required for Startup and Testing of the Project;

- (b) All items which would adversely impact the ability of the Project to operate as intended and would offer a danger of damage to the Project or injury to personnel have been completed; and
- (c) When Contractor believes it has achieved Mechanical Completion of the Project or a stand-alone portion of the Project, it shall notify Owner, which notice shall contain (i) a written report in a form acceptable to Owner, and with sufficient detail to enable Owner to determine whether the Contractor has met the requirements of Mechanical Completion and (ii) Contractor's proposed initial draft of the Punch List. Within ten (10) working days after receipt thereof, Owner shall advise Contractor in writing whether it concurs that the conditions of Mechanical Completion have been satisfied or which conditions Contractor has failed to satisfy.
- (d) The date of Mechanical Completion shall be the date of Owner's written confirmation that all the requirements of Mechanical Completion have been satisfied. The achievement of Mechanical Completion shall not relieve Contractor of any of other obligations under this Agreement, including its obligation to achieve Substantial Completion and Final Completion in accordance with the Milestone Dates set forth above and its obligations arising under Article 5 hereof.

11.3 Performance Testing

11.3.1 *Test Procedures.* Contractor shall commence performance testing of the Project upon at least fifteen (15) Business Days prior written notice to Owner. All performance testing shall be conducted in conformance with Applicable Laws, Applicable Permits and this Agreement and using the test procedures specified in the "Performance Test Protocol" set forth in Appendix C. A detailed written test protocol will be agreed upon by both Parties at least 60 days prior to the Performance Test(s) (the "Test Procedures"). Owner, and its duly authorized agents, servants, employees and invitees have the right to witness the performance testing. If any performance testing result shows that the Project has failed to satisfy any Performance Guarantee, Contractor shall diligently pursue correction of such deficiency and the performance testing shall be repeated in accordance with the Test Procedures

11.3.2 *Test Results.* After completion of each performance test, Contractor shall compile the raw data and determine the results of such performance testing and shall submit to Owner in writing the raw data and completed results of such performance testing. Contractor warrants the accuracy of such raw data and of the conversion of such raw data into the test results.

11.3.3 *Satisfaction of Tests.* Within ten (10) Business Days after its receipt of the results described in Section 11.3.2 hereof, Owner shall respond in writing to Contractor as to whether such performance test satisfied the Performance Guarantees. If the answer is negative, Owner shall include a reasonable description of the basis of its conclusion. Upon its receipt of any negative response, Contractor shall take whatever action is necessary to cure the defect in the performance noted by Owner in such response or, in the event that after repeating the performance testing, the Performance Guarantees have not been satisfied, Contractor shall, at Owner's option, either diligently continue to cure the defect in the performance noted by Owner or pay Owner the Liquidated Damages satisfying the failed test pursuant to Article 13. Failure to meet the Performance Criteria before the Scheduled Substantial Completion Date will result in Liquidated Damages associated with the delay in completion, at Owner's election.

11.4 Substantial Completion

11.4.1 "Substantial Completion" shall occur following the satisfaction of all of the following conditions:

- (a) Mechanical Completion has occurred;
- (b) The Performance Guarantees set forth in Appendix C have been satisfied;
- (c) With the exception of the Punch List Work, the Work has been completed, and can be used to fulfill all functional requirements of the Scope of Work set forth in Appendix A;
- (d) The Punch List has been finalized in a form acceptable to Owner (including Work and timing to complete the Work);
- (e) The Work complies with all Applicable Laws, Applicable Permits, codes, standards and ordinances;
- (f) Contractor has completed all training of Owner's operation and maintenance personnel; and
- (g) Owner has confirmed in writing that the foregoing conditions have been satisfied.

11.4.2 When Contractor has achieved Substantial Completion of the Project, it shall so notify Owner. The notice shall contain Contractor's proposed final draft of the Punch List for the Project. Within ten (10) Business Days after receipt of such notice, Owner shall inspect the Project and all Work and deliver to Contractor in writing a statement either (i) stating that the requirements of Substantial Completion have been satisfied, or (ii) if reasonable cause exists for doing so, stating that Substantial Completion has not been achieved and the reasons therefore, in which event Contractor shall perform such additional Work as will achieve Substantial Completion and may then issue another notice of Substantial Completion. Any additional Work shall be added to

the Punch List. Such procedure shall be repeated until Substantial Completion has been achieved.

For the purposes of payment of Liquidated Damages under Section 13.1, the date of Substantial Completion (the “Substantial Completion Date”) shall be the date on which Contractor delivered the notice of Substantial Completion that was ultimately confirmed by Owner as satisfying the requirements of Substantial Completion. The achievement of Substantial Completion shall not relieve Contractor of any of its other obligations under this Agreement, including its obligation to achieve in a timely manner Final Completion and its obligations arising under Article 5 hereof.

11.5 Final Completion

11.5.1 “Final Completion” shall occur following the satisfaction of all of the following conditions:

- (a) Substantial Completion has occurred;
- (b) Contractor has provided an electronic version of the project operation and maintenance manual (O&M manual) reflecting the as-built condition of the Project and has provided as-built drawings of the Project;
- (c) Contractor shall have fully executed and delivered the Final Release and Waiver attached hereto as Appendix G (the “Final Release and Waiver”); and
- (d) All of the Work, including the Punch List and all training, has been completed.

11.5.2 Following Substantial Completion, when Contractor believes it has achieved Final Completion of the Project, it shall so notify Owner. Within ten (10) Business Days after receipt thereof, Owner shall inspect the Project and all Work and deliver to Contractor in writing a statement either (i) stating that the requirements of Final Completion have been satisfied, or (ii) if reasonable cause exists for doing so, stating that Final Completion has not been achieved and the reasons therefore, in which event Contractor shall perform such additional Work as will achieve Final Completion and may then issue another notice of Final Completion. Any additional Work shall be added to the Punch List. Such procedure shall be repeated until Substantial Completion has been achieved. Owner shall advise Contractor in writing whether it concurs that the conditions of Final Completion have been satisfied or which conditions Contractor has failed to satisfy. If Owner does not initially concur that the conditions of Final Completion have been satisfied, as soon as all failures to satisfy the conditions of Final Completion are corrected, Owner shall give its written confirmation that the Project has achieved Final Completion. The achievement of Final Completion shall not relieve Contractor of any of its other obligations under this Agreement, including its obligations arising under Article 5 hereof.

11.6 Punch List

Contractor shall provide the final draft of the Punch List as part of the Contractor's notice of Substantial Completion. Owner and Contractor will use their best efforts to agree on the final Punch List within five (5) Business Days prior to the actual Substantial Completion Date. If the parties do not reach agreement within such five day period, the draft of the Punch List acceptable to the Owner will become the Punch List (subject to Contractor's right to dispute the inclusion of any item on the Punch List in accordance with Article 15).

11.7 Care, Custody and Control

Care, custody and control of the Project shall pass to Owner upon the Substantial Completion Date pursuant to Section 11.3.3. Prior to transfer of care, custody and control of the Project to Owner, Contractor shall be obligated to replace, repair or reconstruct the Work, or any portion thereof, or supplies furnished by Contractor which are lost, damaged or destroyed by any cause other than the negligence or willful misconduct of Owner, its employees, officers, other contractors, invitees or agents (other than Contractor, Subcontractors and its or their employees, invitees or agents). From and after Substantial Completion, Owner shall assume the risk of physical loss or damage to the Project, other than such loss or damage resulting from completion of work on the Punch List.

11.8 Operation of the Project

11.8.1 Upon achievement of Substantial Completion by Contractor, Owner or its designee shall take possession and control of the Project in accordance with Section 11.7, and shall thereafter be solely responsible for the operation and maintenance thereof, except as otherwise set forth herein. Prior to such full possession and control by Owner or its designee, (i) Owner or its designee shall provide operating personnel to Contractor for start-up and pre-commissioning, and Contractor shall provide the leadership positions during such period, including the technical start-up manager, and other key start-up supervisions positions, all under Contractor's direction and overall supervision for Start-up, Testing and pre-commissioning and (ii) Contractor shall operate the Project in a manner consistent with Good Engineering Practices, this Agreement, Applicable Laws and Applicable Permits.

11.8.2 After Substantial Completion, Contractor shall have reasonable access to the Project and the reasonable cooperation of Owner to complete any Work remaining hereunder, including any Work undertaken by Contractor pursuant to Section 11.7. This right of access shall not include the right to require shut-down or reduction in Project operations. Any such Work will be accomplished by Contractor with minimal interference with operation of the Project and the Owner's biomass facility at the Site.

ARTICLE 12 - GUARANTEES

12.1 Guarantees

Contractor shall provide Performance Guarantees that include

- (a) Substantial Completion Date; and

(b) Consumption Guarantee.

Except for the “Substantial Completion Date” Performance Guarantee, the Performance Test procedures and guaranteed operating parameters for each Performance Guarantee are specified in Appendix C attached hereto.

ARTICLE 13 - LIQUIDATED DAMAGES

13.1 Damages

The Owner will be damaged by failure to achieve Substantial Completion by the Scheduled Substantial Completion Date, the Consumption Guarantee, or the Performance Guarantees. Contractor will promptly pay to Owner as liquidated damages, and not as a penalty, the amounts determined in accordance with Sections 13.2, 13.3 or 13.4, as applicable, in each case for failure of Contractor to achieve the Performance Guarantee referenced in such Section (collectively and individually, “Liquidated Damages”).

13.2 Liquidated Damages for failure to achieve Scheduled Substantial Completion Per Contract Schedule

Liquidated Damages shall be paid to Owner by Contractor if Contractor fails to achieve Substantial Completion on Scheduled Substantial Completion Date (“SSCD”) specified in Appendix C. In such event, Liquidated Damages shall be calculated on a daily basis until Substantial Completion is achieved, as follows:

The (i) sum of the total number of days from the date of issuance of the NTP to the date Contractor achieves Substantial Completion; minus (ii) the number of days from the issuance of the NTP until the agreed upon SSCD under Section 11.1; times (iii) the Daily LD Rate listed in the chart below.

Days Beyond SSCD		Daily LD Rate	Cumulative LDs
From	To		
0 Days	10 Days	\$ -	\$ -
11 Days	18 Days	\$ 3,571	\$ 25,000
19 Days	26 Days	\$ 3,571	\$ 50,000
Over 58 Days		\$ 3,571	TBD

13.3 Liquidated Damages for failure to achieve Consumption Guarantee

The Liquidated Damages Payment by Contractor to Owner in connection with Consumption Guarantee being higher than agreed upon in Appendix C shall be calculated as follows:

The product of (i) the excess in the Consumption Rate in lb/hr times (ii) \$14,200 where the excess shall be the greater of (a) zero or (b) measured consumption in lb/hr minus the Consumption Guarantee.

13.4 Substantial Completion and Contract Schedule

Notwithstanding anything to the contrary contained in this Agreement, Contractor shall not be entitled to satisfy its obligation to achieve Substantial Completion by payment of money, including the payment of any Liquidated Damages, unless the Project milestones have been achieved pursuant to the Contract Schedule. Contractor shall be required to undertake corrective action at Contractor's sole cost until the Project has achieved the Contract Schedule or Owner has terminated this Agreement pursuant to Section 10.1.

13.5 Invoicing and Payment of Liquidated Damages; Limitation

Owner will provide prior notice to Contractor of the incurrence of any Liquidated Damages Owner intends to collect. If any Liquidated Damages are payable from Contractor to Owner pursuant to this Article 13, Contractor shall pay such Liquidated Damages amounts to Owner not later than 10 days after receipt of written notice by Owner from time-to-time of such requirement.

13.6 Nature of Damages

It is understood and agreed between the Parties that the terms, conditions, and amounts fixed pursuant to this Article 13 do not constitute a penalty and are reasonable estimate of Owner's damages considering the damages that Owner shall sustain in the event of Contractor's failure to cause the Substantial Completion Date to occur on or prior to the Scheduled Substantial Completion Date or Contractor's failure to cause the Project to meet the Performance Guarantees. These amounts are fixed as liquidated damages because of the difficulty of ascertaining the exact amount of damages that will be sustained by Owner by reason of any such failure and the amounts shall be applicable regardless of the actual amount of damages sustained by Owner by reason of any such failure, but such amounts shall not limit Contractor's liability for any other breach hereunder. If Owner elects to collect Liquidated Damages pursuant to Sections 13.2, 13.3 or 13.4, such Liquidated Damages will be Owner's sole remedy with respect to the failure to achieve the performance goals in Sections 13.2, 13.3 or 13.4, respectively, giving rise to the Liquidated Damages; provided nothing herein shall limit Owner's ability to seek additional remedies in respect of any other breach of this Agreement by Contractor. Notwithstanding anything to the contrary in this Agreement and for the avoidance of doubt, in the event that, due to Contractor's breach or default under this Agreement, the Performance Guarantee is not met, then, in such event, damages due to Owner from Contractor shall not be liquidated.

13.7 Maximum Liquidated Damages

Notwithstanding anything to the contrary in this Agreement, the cumulative total of Liquidated Damages payable pursuant to this Article 13 shall not exceed the product of (a) seven and one-half percent (7.5%) and (b) the Contract Price plus the amount, if any, of additional compensation payable by Owner pursuant to any Change Order in effect pursuant to Section 3.2.

ARTICLE 14 - GENERAL PROVISIONS

14.1 Independent Contractor

Contractor shall, and shall ensure that each Subcontractor shall, be an independent contractor with respect to the Work to be performed hereunder. Neither Contractor nor its Subcontractors, nor their respective agents or employees, shall be deemed to be the servants, employees, partners or agents of

Owner by virtue of this Agreement. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligations or liabilities. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act on behalf of, or to act as or be an agent, representative, employee or servant of, or to otherwise bind or obligate the other Party.

14.2 Title to Plans and Specifications

Without limitation to Section 2.10.1, drawings and specifications, including Construction Documents, prepared pursuant to this Agreement or provided by Contractor to Owner shall be and shall remain the exclusive property of Owner.

14.3 Patents

In furtherance and not in limitation of the indemnifications set forth in Section 6.1, Contractor shall defend at its own expense, indemnify and hold harmless Owner from any suit or action or proceeding brought against Owner based on a claim that any item of Materials and Equipment, Services, or any part thereof, furnished or specified by Contractor hereunder or any use thereof for purposes of the Project, constitutes an infringement of any claim of any patent in the United States of America (or of any other jurisdiction from which any of the Materials, Equipment or Services are sourced by Contractor) or an infringement of any trade secret, trademark, copyright or other proprietary rights; provided, Contractor is notified promptly in writing and is given authority for and control of the defense, and all necessary information and assistance for the defense. If said item or any part thereof is determined to constitute infringement or its use is enjoined, then Contractor shall, at its own expense, either procure for Owner the right to continue using said item, or replace the same with a non-infringing item, or modify it or its use so it becomes non-infringing.

14.4 Binding Effect; Successors and Assignees

14.4.1 This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assignees.

14.4.2 During the period from the date of this Agreement through expiration of the Warranty Period and thereafter so long as a claim or proceeding brought by Owner is then pending or unresolved, Contractor shall not assign or convey this Agreement or any of its rights, titles or interests, or any of its liabilities or obligations under this Agreement without the prior written consent of Owner. Following expiration of the Warranty Period, and so long as no claim or proceeding brought by Owner is then pending or unresolved, Contractor shall not assign or convey this Agreement or any of its rights, titles or interests, or any of its liabilities or obligations under this Agreement without the prior written consent of Owner, which consent will not be unreasonably withheld, conditioned or delayed.

14.4.3 Except for transfers according to Section 14.4.4 or unless otherwise agreed to by the Parties in writing, no transfer or assignment of this Agreement or of any or all of the purported transferring Party's rights or obligations hereunder permitted or consented to according to this Section 14.4 shall relieve the transferring Party of the responsibility or liability for any obligation imposed under this Agreement. Any purported transfer or assignment in contravention of this Section 14.4 shall be null and void ab initio.

14.4.4 Notwithstanding anything in this Section 14.4 to the contrary, Owner may, without the consent of Contractor, collaterally assign its rights under this Agreement as security for the Project Financing, in whole or in part, and related obligations,

including interest rate hedges. If Owner collaterally assigns its rights under this Agreement, Contractor shall, upon the request and at the expense of Owner, from time to time deliver to a Lender and to Owner an opinion of counsel opining as to the enforceability of the Agreement against Contractor and such other matters as such Lender may reasonably require in a form reasonably acceptable to such Lender, with such modifications thereto (and any resulting modifications to this Agreement as may be contained therein) as such Lender may reasonably request or as otherwise reasonably requested by Owner to facilitate the Project Financing with such Lender.

- 14.4.5 Owner may assign any or all of its rights, title and interest in and to or arising out of or in connection with this Agreement to any corporation, partnership, limited liability company or any other third party, provided that such party (i) acquires the Project, and (ii) has or will have the financial capability and energy project experience reasonably necessary to perform Owner's obligations hereunder.

14.5 Notices

All notices pertaining to this Agreement shall be in writing, and shall be sufficient and deemed duly given when sent by facsimile (with hard copy to follow), overnight courier, certified mail or personal delivery to the applicable Party at the address below or to such other address as a Party may designate by prior notice given in accordance with this provision to the other Party:

If to Owner:

Desert View Power LLC
2600 Capitol Ave
Suite 430
Sacramento, CA 95816
Attn: Russell Huffman
Fax: (916) 520-1725
Email: RHuffman@greenleaf-power.com

With copy (which shall not constitute notice) to:

Desert View Power LLC
2600 Capitol Ave
Suite 430
Sacramento, CA 95816
Attn: Chief Operating Officer
Fax: (916) 520-1725
Email: cabbottgreenleaf-power.com

If to Contractor:

Nol-Tec Systems, Inc.
425 Apollo Drive
Lino Lakes, MN 55014

Attn: James Anderson
Fax: (651) 780-4400
Email: jimanderson@nol-tec.com

14.6 Entire Agreement and Modifications

This Agreement, together with the exhibits, appendixes and schedules hereto, sets forth the full and complete understanding of the Parties as of the date first above stated, and supersedes any and all agreements and representations, written or oral, made or dated prior thereto.

This Agreement may be supplemented and amended only by mutual written agreement. No supplement or amendment to this Agreement shall be effective unless such supplement or amendment is in writing and signed by authorized representatives of both Parties.

14.7 Restrictions on Publicity

Contractor shall not issue any press release, advertisement, publicity material or similar publication or participate in a media event or meeting with public officials, permit agencies, regulatory authorities or similar parties with regard to the Project without the prior written consent of Owner.

14.8 Not for Benefit of Third Parties

Except with respect to the rights of (i) successors and permitted assigns as provided above, and (ii) the Indemnified Parties and Contractor Indemnified Parties under Article 6, this Agreement and each and every provision hereof are for the exclusive benefit of the Parties hereto not for the benefit of any other party.

14.9 Interpretation

This Agreement and any dispute arising therefrom shall be governed and interpreted in accordance with the laws of the State of Delaware, excluding choice-of-law provisions that would designate the law of any other jurisdiction.

14.10 Headings and Subheadings

All article, section and subsection headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

14.11 No Waiver

No waiver by a Party hereto, of any breach or default by the other Party, of its obligations hereunder, shall be deemed or construed to be a consent or waiver to any other breach or default in the performance by such other Party of the same or any other obligations of such other Party hereunder. The giving of a waiver by a Party in any one instance shall not limit or waive the necessity to obtain such Party's waiver in any future instance. No waiver of any rights under this Agreement shall be binding unless it is in writing signed by the Party waiving such rights.

14.12 Limitation of Liability

- 14.12.1 No Party, any of its Affiliates, any subcontractor of any tier (including Subcontractors), nor any of their respective officers, directors, employees, agents or representatives shall be liable to the other Party for consequential, special, indirect or incidental loss or damages, or loss of use of the Project, loss of profits, loss of electricity or steam production, cost of replacement or substitute power or steam facilities, cost of money, financing cost, loss of use of capital or revenue, claims of customers or financiers or amounts in settlement, however the same may be caused. Notwithstanding the foregoing, this Section 14.12.1 shall not (i) apply to any Loss arising from fraud, gross negligence or willful misconduct, (ii) affect the Contractor's obligations to pay Liquidated Damages pursuant to Article 13, nor (iii) limit a Party's obligation to indemnify the other for claims of third parties pursuant to Article 6 or Section 14.3.
- 14.12.2 Releases, indemnities, limitations and assumptions of liability and limitations on remedies expressed in this Agreement shall apply regardless of whether the liability or remedies arise out of contract, tort (including negligence), strict liability or otherwise.
- 14.12.3 Except as expressly provided in this Agreement, the total and cumulative liability of Contractor to Owner at any time arising from or relating in any way to this Agreement, including Contractor's obligations to pay Liquidated Damages pursuant to Article 13, shall in no event exceed in the aggregate the sum of the Contract Price plus any other amounts paid by Owner to Contractor pursuant to this Agreements (calculated without duplication); provided, however, that the limitations of this Section 14.12.3 shall not apply in the case of (i) fraud, gross negligence, willful misconduct, fraud or illegal or unlawful acts by Contractor or its Affiliates; (ii) Contractor's indemnification obligations for claims of third parties pursuant to Article 6; (iii) Contractor's failure to achieve the Performance Guarantee; or (iv) risks insured through Contractor insurance policies required under this Agreement, it being the Parties' specific intent that the limitation of liability shall not relieve the insurer's obligations for such insured risks. Notwithstanding anything to the contrary herein, the Parties' acknowledge and agree that the amount of any insurance proceeds paid to Owner allocable to claims arising from or relating to this Agreement shall be credited against the total and cumulative liability of Contractor at any time arising from or relating to this Agreement.

14.13 Severability

In the event that any of the provisions of this Agreement, or portions or applications thereof, are held to be unenforceable or invalid by any court of competent jurisdiction, (i) such provision or portion shall be fully severable, (ii) this Agreement shall be construed and enforced as if such provision or portion had never comprised a part of this Agreement, (iii) the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected

thereby, and (iv) the Parties shall amend this Agreement to add a new provision or portion having, to the greatest extent enforceable, an intent similar to the unenforceable provision or portion.

14.14 Counterparts

This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each complete set of which, when so executed and delivered by all parties, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

14.15 Further Assurances

If either Party reasonably determines that any further instruments or any other things are necessary or desirable to carry out the terms of this Agreement, the other Party will execute and deliver all such instruments and assurances and do all such things as the first Party reasonably deems necessary or desirable to carry out the terms of this Agreement.

14.16 Joint Effort

The Parties acknowledge and agree that the terms and conditions of this Agreement, including but not limited to those relating to allocations of, releases from, exclusions against and limitation of liability, have been freely and fairly negotiated. Each Party acknowledges that in executing this Agreement they rely solely on their own judgment, belief, and knowledge, and such advice as they may have received from their own counsel, and any representation or statements have not influenced them made by any other Party or its counsel. No provision in this Agreement is to be interpreted for or against any Party because that Party or its counsel drafted such provisions.

14.17 Compliance

In the performance of their respective obligations under the Agreement, the Owner and Contractor, and their Affiliates, officers, directors, managers, agents and employees, shall comply strictly with all Applicable Laws.

14.18 Confidentiality.

- 14.18.1 This Agreement and any confidential or proprietary information disclosed by one Party (the “Discloser”) to the other (the “Recipient”) in connection with this Agreement and performance hereof (“Confidential Information”), shall only be used by the Recipient in connection with the performance of this Agreement and in connection with the development, financing, re-financing, startup, commissioning, testing and operation and maintenance of the Project. The Recipient shall treat such information as private and confidential and shall not copy, transfer or otherwise disclose the same or any particulars thereof without the prior written consent of the Discloser, provided that nothing in this Section 14.18 shall prevent the disclosure of any such information to permitted successors or assigns of the Parties hereunder or:

(a) to either Party's agents, Affiliates, shareholders, directors, officers, employees, advisors, representatives, lenders, equity investors, consultants and counsel as necessary for the performance of its obligations or the exercise of its rights under this Agreement; provided that such Persons are informed of the confidential nature of such information, and the Party disclosing such information shall be liable to the other for any disclosure by such Persons in violation of the terms of this Section;

(b) which was already in the public domain prior to its disclosure by the Discloser or which after such disclosure entered the public domain otherwise than by a breach of the provisions of this Section;

(c) which is required to be disclosed (but only to the extent necessary) by Applicable Laws or Governmental Authority, or pursuant to the rules of the stock exchange on which securities of Recipient or its Affiliates are traded; provided that the Party required to disclose such information shall give prompt notice (and prior notice if legally permissible) to the other of such required disclosure and, if so requested by such other Party, shall, at such other Party's cost use all reasonable efforts to oppose the requested disclosure as appropriate under the circumstances;

(d) which is relevant (as determined by the disclosing Party) and disclosed to a third party, mediator, arbitrator, court or tribunal in connection with any Dispute, provided that the Discloser shall advise and request the third party mediator, arbitrator, court or tribunal to maintain the confidentiality of such information;

(e) which can be proved to have been in the possession of the Recipient at the time of disclosure and which was not previously obtained, directly or indirectly, from the Discloser; or

(f) which otherwise lawfully becomes available to the Recipient from a third party under no obligation of confidentiality.

14.18.2 It is agreed that each Party shall be entitled to relief both at law and in equity, including injunctive relief and specific performance, in the event of any breach or anticipated breach of this Section, without proof of any actual or special damages.

14.18.3 All right and title to, and interest in, Owner's Confidential Information shall remain with Owner. All right and title to, and interest in, Contractor's Confidential Information shall remain with Contractor except as otherwise provided under this Agreement. Contractor shall deliver any tangible representations of any Owner's Confidential Information, including all copies thereof in its, or its Affiliate's, possession or control, to Owner upon request.

14.18.4 Notwithstanding any prior termination of this Agreement, nor the achievement of Final Completion the obligations and commitments established by this Section 14.18 shall remain in full force and effect for five (5) years from the earlier of (i)

the date this Agreement is terminated or (ii) the Substantial Completion Date; provided, however, that with respect to any Confidential Information that constitutes a “trade secret” (as defined under Applicable Laws), these covenants shall apply for the life of the trade secret.

14.19 Records Retention.

Contractor agrees to retain for a period of five (5) years from the Substantial Completion Date all records relating to its performance of the Work or Contractor’s warranty obligations herein, and to cause all Subcontractors to retain for the same period all their records relating to the Work.

ARTICLE 15 - DISPUTE RESOLUTION

15.1 Dispute Resolution.

(a) In the event a dispute arises between Owner and Contractor regarding the application or interpretation of, or in any way relating to this Agreement, including the enforceability of the agreement to arbitrate below, Owner and Contractor shall use reasonable efforts to reach a reasonable and equitable resolution of the matter on an expedited basis and, in no event, more than ten (10) days after one Party notifies the other Party in writing of the existence of a dispute. In the event such efforts do not result in the resolution of the dispute, either Party may by Notice at any time to the other Party referencing this Section 15.1 request the other Party to designate an officer of its management to meet at the Site, or at any other mutually agreed location, to resolve the dispute. The designated officers shall meet within five (5) days following the notice date unless a later date is agreed to by the Parties, to resolve the dispute, with each Party agreeing not to unreasonably withhold or delay its agreement to a later date for such meeting. The Parties may also mutually agree to select a mutually agreeable third party mediator to participate in such meetings, who shall have no binding authority in any such dispute.

(b) Provided that the Parties have been unable to resolve a dispute pursuant to the procedures set forth above within thirty (30) days after the date the officers meet to attempt to resolve the dispute as set forth in subsection (a) above, then either Party, in its sole discretion, may invoke binding arbitration by JAMS for arbitration in Sacramento, California, in accordance with the Construction Industry Arbitration Rules then in effect. If the aggregate amount of the dispute(s) is less than One Million Dollars (\$1,000,000), then the Parties shall mutually agree on one (1) arbitrator who shall be an expert in the construction and power generation field. If the Parties cannot agree on one (1) arbitrator or if the aggregate amount of the dispute(s) is equal to or greater than One Million Dollars (\$1,000,000), then there shall be three (3) arbitrators, with each Party selecting one who shall be an expert in the construction and power generation field and a third independent arbitrator appointed by the two (2) arbitrators; the third arbitrator shall be the chairman of the panel. The American Arbitration Association shall be empowered to appoint any arbitrator not named in accordance with the procedure set forth herein. The Parties shall proceed with the arbitration expeditiously and shall conclude all proceedings there under in order that a decision may be rendered within one hundred and twenty (120) days or, in the case of a payment dispute, forty-five (45) days from service of the demand for arbitration. The arbitrators’ decision shall be in writing, but shall be as brief as possible. The arbitrators shall not assign the reasons for

their decision. The decision of the arbitrators shall be final and binding upon the Parties without the right of appeal to the courts. The Party prevailing in any arbitration proceeding under this Agreement shall be entitled to recover all of its costs of arbitration and all expenses related thereto (including attorneys' fees) from the non-prevailing Party at the discretion of the arbitrators; provided, however, that if a Party is non-prevailing only in part, such Party shall bear no more than the prevailing Party's costs in proportion to the extent to which it is non-prevailing.

(c) Except as expressly provided in this Agreement, any election to refer a dispute to resolution in accordance with this Article shall not relieve Contractor of its obligation to proceed with the Work in accordance with this Agreement nor relieve Owner of any of its obligations under this Agreement unless the Owner shall order a suspension in which event the provisions of Article 10 shall apply.

Contractor shall include these dispute resolution provisions in all subcontracts it enters into for the Project with a value in excess of \$500,000.

15.2 Injunctive Relief.

Notwithstanding anything in this Agreement to the contrary, nothing herein is intended to, nor shall it, prevent the Parties from seeking injunctive relief at any time as may be available under law or equity.

15.3 Performance During Dispute

While any Dispute is pending, Owner and Contractor shall continue to perform their obligations hereunder to the extent possible notwithstanding such Dispute. Without limiting the foregoing, Contractor shall promptly commence and diligently complete any Work contained in an Owner Change Directive notwithstanding any Dispute arising out of or relating to such Owner Change Directive.

15.4 Survival

The provisions of Articles 4, 5, 6, 8, 10, 14 and 15 shall survive the Final Completion Date and the expiration or termination of this Agreement.

ARTICLE 16 - UNCONTROLLABLE CIRCUMSTANCES

16.1 No Liability. Subject to the conditions set forth in Section 16.1.1, neither Party shall be liable for any failure or delay in complying with its obligations hereunder to the extent that such failure or delay has been caused, or contributed to, by one or more Uncontrollable Circumstances or its or their effects or by any combination thereof. At such time as the Uncontrollable Circumstance shall cease, the Parties shall, within a reasonable time thereafter, comply with their obligations hereunder.

16.1.1 A Party may rely on a claim of Uncontrollable Circumstance to excuse its performance only to the extent that:

(a) such Uncontrollable Circumstance is not attributable to any negligent acts, errors, omissions, willful misconduct or for any breach or default of this Agreement by such Party, or with respect to Contractor, any Subcontractors;

(b) such Uncontrollable Circumstance is caused by factors beyond that Party's reasonable control;

(c) despite taking all reasonable technical and reasonable commercial precautions and measures to prevent, avoid, mitigate or overcome such Uncontrollable Circumstance and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences;

(d) such Party provides notice to the other Party of a Uncontrollable Circumstance but no later than five (5) Business Days after the time such Party became aware of the Uncontrollable Circumstance, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Contract, and thereafter provides the other Party within ten (10) Business Days after such initial notice a detailed update of the information in the initial report and a plan to mitigate such Uncontrollable Circumstance, provided that if the initial notice is not provided within such five (5) Business Day period then the Excused Party shall be able to claim the benefit of such Uncontrollable Circumstance only to the extent, if any, that failure to provide such timely notice did not harm or prejudice the other Party, but the failure shall not otherwise limit the Excused Party's rights to claim the benefit of such Uncontrollable Circumstance under this Agreement;

(e) such Party exercises all reasonable efforts to continue to perform its obligations under this Agreement;

(f) such Party expeditiously takes reasonable action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem;

(g) such Party exercises commercially reasonable efforts to mitigate or limit damages to the other Party; and

(h) such Party provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

16.2 Removal of Uncontrollable Circumstance.

If, within a reasonable time after a Uncontrollable Circumstance that has caused Contractor to suspend or delay performance of the Work, action to be undertaken at the expense of Owner has been identified and recommended to Contractor, and Contractor has failed within ten (10) Business Days after receipt of notice thereof from Owner to take such action as Contractor could lawfully and reasonably initiate to remove or relieve either the Uncontrollable Circumstance or its direct or

indirect effects, Owner may, in its sole discretion and after notice to Contractor, initiate such commercially reasonable measures as will be designed to remove or relieve such Uncontrollable Circumstance or its direct or indirect effects and thereafter require Contractor to resume full or partial performance of the Work.

16.3 Performance Not Excused.

No suspension of performance or extension of time shall relieve the Party benefiting therefrom from any liability for any breach of the obligations that were suspended or failure to comply with the time period that was extended to the extent such breach or failure occurred prior to the occurrence of the applicable Uncontrollable Circumstance.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement on the day and year first hereinabove written.

DESERT VIEW POWER LLC

By: James R. Hoffman
Name: James R. Hoffman
Title: V.P. of California Operations

NOL-TEC SYSTEMS, INC.


By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement on the day and year first hereinabove written.

DESERT VIEW POWER LLC

By: _____
Name:
Title:

NOL-TEC SYSTEMS, INC.

By:  7/30/2015
Name: JAMES ANDERSON
Title: VP, ENGINEERING & PROJECTS